

347
I7

AMERICAN STATE TRIALS

*A Collection of the Important and Interest-
ing Criminal Trials which have taken place
in the United States, from the beginning
of our Government to the Present Day.*

WITH NOTES AND ANNOTATIONS

JOHN D. LAWSON, LL.D.
EDITOR

VOLUME IX

WEST BENGAL LEGISLATURE
LIBRARY.
ST. LOUIS
THOMAS LAW BOOK COMPANY
1918

Date 26-3-59
Accn. No. 267
Catalog. No. 347.761.17
Price Rs. 850/- full set

Copyright, 1918
By JOHN D. LAWSON

**TO THE HONORABLE
JOSEPH WINGATE FOLK**

**WHOSE VICTORIOUS BATTLE AGAINST
CIVIC CORRUPTION IS RECORDED IN
THESE PAGES AND WHOSE SUCCESSFUL
CAREER AS GOVERNOR OF MISSOURI HAS
NOT BEEN FORGOTTEN BY THE NATION
THIS VOLUME IS RESPECTFULLY DED-
ICATED.**

PREFACE TO VOLUME NINE.

The trial of *John H. Surratt* (p. 1) was the closing act of that great tragedy, the assassination of the illustrious Lincoln. Its result proved nothing except that when political passion is strong in a community the only way to convict for a political crime in a civil court is to have a jury of the right political faith. Robespierre understood this during the French Terror and so did the Republicans in the Southern States in Reconstruction days. The case is, nevertheless, one of the American *causes celebres* and the report of the trial is worth preserving for the masterly speech to the jury of the government prosecutor, Edwards Pierrepont.

The history of nearly every American city has a dark page on which is recorded the betrayal of official trusts, the embezzlement of public funds, the theft of valuable franchises. Perhaps the city of St. Louis has been no worse than others in these things, but certainly no picture of civic corruption has ever been shown so clearly as that which Joseph W. Folk, Prosecuting Attorney, exposed to the world in the trials in the Missouri courts, of which five are reported in this volume. St. Louis is one of the oldest, the largest and the wealthiest of the cities of the West; it boasts of its manufactures, its commerce, its colleges and public schools, its churches and newspapers, its great parks and avenues, its art and its literature, and yet at the beginning of the Twentieth Century, and when it was inviting the nations of the world to its magnificent Louisiana Purchase Exposition, this is how its citizens

were content to be governed! By its charter, legislative power of great scope was vested in a Municipal Assembly, composed of a Council and a House of Delegates. Here is a description of the latter body made by a grand jury in the year 1902:

"We have had before us many of those who have been, and most of those who are now, members of the House of Delegates. We found a number of these utterly illiterate and lacking in ordinary intelligence, unable to give a better reason for favoring or opposing a measure than a desire to act with the majority. In some, no trace of mentality or morality could be found; in others, a low order of training appeared, united with base cunning, groveling instincts, and sordid desires. Unqualified to respond to the ordinary requirements of life, they are utterly incapable of comprehending the significance of an ordinance, and are incapacitated, both by nature and training, to be the makers of laws. The choosing of such men to be legislators makes a travesty of justice, sets a premium on incompetency, and deliberately poisons the very source of law.

"Our investigation, covering more or less fully a period of ten years, shows that, with few exceptions, no ordinance has been passed wherein valuable privileges or franchises are granted until those interested have paid the legislators the money demanded for action in the particular case. Combines in both branches of the Municipal Assembly are formed by members sufficient in number to control legislation. To one member of this combine is delegated the authority to act for the combine, and to receive and to distribute to each member the money agreed upon as the price of his vote in support of or opposition to a pending measure. So long has this practice existed, that such members have come to regard the receipt of money for action on pending measures a legitimate perquisite of a legislator."

And a writer in a popular magazine gave at the same time the following account of these bodies:

"In order to insure a regular and indisputable revenue, the combine of each House drew up a schedule of bribery prices for all possible sorts of grants, just such a list as a commercial traveler takes out on the road with him. There was a price for a grain elevator, a price for a short switch; side tracks were charged for by the linear foot, but at a rate which varied according to the

nature of the ground taken; street improvements cost so much; wharf space was classified and precisely rated. As there was a scale for favorable legislation, so there was one for defeating bills. It made a difference in the price if there was opposition, and it made a difference whether the privilege asked was legitimate or not. But nothing was passed free of charge. Many of the legislators were saloon keepers—it was in St. Louis that a practical joker nearly emptied the House of Delegates by getting a boy to rush into a session and call out, 'Mister, your saloon is on fire,'—but even the saloons of a neighborhood had to pay to keep in their inconvenient locality a market which public interest would have moved.

"From the Assembly, bribery spread into other departments. Men empowered to issue peddlers' licenses and permits to citizens who wished to erect awnings or use a portion of the sidewalk for storage purposes charged an amount in excess of the prices stipulated by law, and pocketed the difference. The city's money was loaned at interest, and the interest was converted into private bank accounts. City carriages were used by the wives and children of city officials. Supplies for public institutions found their way to private tables; one itemized account of food furnished the poorhouse included California jellies, imported cheeses, and French wines; a member of the Assembly caused the incorporation of a grocery company, with his sons and daughters the ostensible stockholders, and succeeded in having his bid for city supplies accepted although the figures were in excess of his competitors. In return for the favor thus shown, he indorsed a measure to award the contract for city printing to another member, and these two voted aye on a bill granting to a third the exclusive right to furnish city dispensaries with drugs."¹

And here is the confession, under oath, of the Speaker of that august body, the House of Delegates, one Murrell, whose brother was also a member.²

Am a livery stable keeper; was a member of the House of Delegates for six years; was a member in 1899; was speaker when the lighting bill was passed. Got down to the House on the evening of November 28th a little late. As I came into the House I met my brother there and he was seated kind of to one side, and I said,

¹ "Tweed Days in St. Louis" (Wetmore & Steffens), 19 McClure, 577.

² Trial of Julius Lehman, *post*, p. 586.

"What is the trouble?" He said, "I have seen Butler and he will not give \$75,000; won't give over \$47,500 and I won't have any more to do with it." Then I was called into the clerk's office. When I came out was told it was all right. I called the House to order. Mr. Lehman got up and made a motion to reconsider the bill which failed to pass at the previous meeting, and it was reconsidered. All the members of the combine voted for it. Was in the chair at the time. Went after that to Lehman's house (where the "swag" was divided). When you were elected in 1897 you subscribed to the oath. You solemnly swore then that you would truthfully, honestly and faithfully, or words to that effect, discharge your duties as a member of the House of Delegates? Yes, sir. In 1899 and 1901 you subscribed to the same oath again? Yes, sir. From 1897 to 1899 can you tell how often you violated that oath? Could not state the exact number of times. Just approximate it, come within a hundred or fifty times? I guess two or three times. Well, from 1899 up to 1901 how often did you violate it? I could not say. Well, approximate it, come within twenty-five, thirty, forty or fifty times? No more than three or four times. And from 1901 up to 1903? None as I know of. Have you any lurking suspicion that there has been occasion that you do not know of on which you violated that oath? No, sir. In January, 1902, do you know about how many times you were guilty of perjury? I think it was twice, I am not positive. You are certain it was once? Yes, sir. And your best impression now is it was twice? Yes, sir. There is no question about your being satisfied you were guilty of perjury at least once in 1902? Yes, sir. And the probabilities are that it was twice? Yes, sir.

But of all the individuals that the people of St. Louis chose to represent them in the administration of the affairs of their city, Delegate John Helms must go down in history as the star. Hear him as he stands in the witness box on the trial of Julius Lehman:³

Am thirty-five; understand the obligation of an oath. When elected to the House of Delegates took the oath of office; swore that I would faithfully discharge the duties of my office. Understood what the oath meant; proceeded as early as I could to violate it.

Give us, please, the connection as nearly as you can between the two instances of taking your oath and violating the oath; when was it you first sold your vote? About eight or nine months after,

I think; don't remember what bill it was. The next trade of that sort was made some time after that. I don't know exactly. From about nine months after I went into office down to the time when I quit I kept up a continuous course of trafficking and selling my vote. How many times I sold it altogether I don't know. The lowest price I got for it was fifty-odd dollars. Did not sell it once for a stove. The highest price I got was \$3,000. If a man came along and all I could get out of him was \$50 I took \$50, and if \$2,000 I took \$3,000, the price depended on the circumstances what could be had; was indicted for my connection with the Suburban bill; also indicted for my connection with this lighting bill and both of these cases have been dismissed. They have a new information against me regarding the Suburban bill. I was also indicted for perjury about knowledge of the Suburban deal. That is pending yet. Went before the grand jury and was examined as to my connection with the Suburban bill and denied any such connection; was sworn before the grand jury and examined under oath, and under oath I stated I had no connection with that transaction at all; that led to my being indicted for perjury. Was examined before the grand jury as to my connection with the lighting bill for the purpose of learning whether there was a combination of members in the House of Delegates for the purpose of controlling legislation. I denied that there was any such combination.

When did I come to make the change of front? After being in jail for six weeks I made up my mind if I got a chance to go before the grand jury I was going to tell the truth, because I had three indictments against me, and that was enough; I was not going to have any more. I was getting \$45,000 bail and if I got any more I knew I would not get out on bail. Have no understanding with anybody representing the prosecution as to what is to happen to me. It was my practice in the House of Delegates when a bill came up to find out what there was in it. We all tried to find out what was in it. It did not make much difference whether the bill was an important one or not; we all wanted to find out what was in it, that is the members of the combination. They were all out for what was in it. That was kept up by me continuously from about eight months after I was sworn into office down to the expiration of my term. My business is that of builder and contractor. Builder of houses over the river at Granite City and Madison and repairing buildings. Served two terms in the House of Delegates. Went into the business of building and contracting about a year ago.

After you had exhausted your resources as vendor of votes? Pretty near. The highest price I received was \$3,000 on the Central Traction; don't remember what the \$50 was on.

Can official corruption find anywhere in the world a worse example than this?

Joseph W. Folk, a young Tennessee lawyer who had removed to St. Louis in 1892, and after a few years had been elected Prosecuting Attorney, read one morning in his newspaper a short item to the effect that members of the Municipal Assembly were selling railroad franchises for money, and that the money was in a safe deposit box of one of the trust companies. He at once summoned a number of the Councilmen and Delegates before the grand jury.

The next day subpoenas, commanding appearance before the grand jury, were served on every man who had been a member of the Municipal Assembly when that body passed the Suburban franchise bill and upon clerks and other officers of both houses. Officers of the street railway company, bank cashiers and bookkeepers and other persons who in some manner might have a knowledge of the transaction were likewise ordered to visit the inquisitorial chamber.

One might suppose that this flood of summonses caused consternation. It did not, because the boodlers were too strongly entrenched to fear an attack; bribery had been too long rampant to expect a sudden pruning; and too many prominent St. Louisans were involved to permit the esclandre going very far.

Flaring headlines in newspapers announced that an inquiry was on, but such editorial comment as appeared made light of Mr. Folk's actions and prophesied another flash in the pan.

An uproariously merry crowd assembled in the anteroom to the grand jury chamber on the morning after Mr. Folk had opened his batteries. Members of the Council and the House of Delegates cracked jokes at the expense of the young lawyer and told stories to while away the time until they should be called.

Occasionally a name would be pronounced by a deputy sheriff and the person indicated would pass into the room where the grand jury was in session. He would soon come out, smiling broadly, and would wink in high glee to his comrades.

"What did you say, Bill?" would be asked.

"Nawthin'. I don't know nawthin'," he would reply. Then "Nawthin'. We don't know nawthin'," they chorused in rejoinder, and that became the slogan.

"Go in, Yulius, and tell what you know about putting lights on

the water tower." This to a delegate who had long posed as the clown of the House.

Soon he came out—Julius Lehman, representing a ward in the north end of town.

"What did you say, Yulius?" they cried.

"Nawthin', I don't know nawthin'."

And all repeated: "Nawthin'. We don't know nawthin'."*

Then Mr. Folk made a leap in the dark. He summoned Charles H. Turner, the president of the Suburban Company, which he suspected was the corporation in question, and Philip Stock, whom he suspected of being the legislative agent who had negotiated the deal with the Assemblymen, and intimating that he knew the whole story, told them that he would give them their choice of being either witnesses or defendants in the coming trial. Thinking that some one had "squealed," Turner and Stock became frightened and decided to be witnesses for the State and divulge everything to the grand jury.

The witnesses were dismissed and Circuit Attorney Folk sat alone in his office.

Had the young lawyer been willing to admit it, that day would have passed into St. Louis history as his Waterloo; had he been built of less sterner stuff, the investigation into the municipal corruption would have ended then and there. Not a witness that had been examined had admitted a material fact upon which an indictment could be found. One and all had denied knowledge of any corruption fund and any connection therewith. But the thought of retreat never entered his mind. To understand why this was, one must become acquainted with another of Mr. Folk's characteristics; that is, his confidence that right will prevail. He sat there, wearing his smile mask even in his solitude, smoked cigar after cigar and planned another battle.

Early in the morning the first gun was fired. Charles H. Turner, president of the St. Louis and Suburban Railroad Company, and Philip Stock, agent of the Brewers' Supply Company, were summoned to the circuit attorney's office.

"Good morning, gentlemen," said Mr. Folk, when they entered.

* The Battle Against Bribery, see *post*, p. 542.

"Please be seated," and he smiled graciously as they drew up chairs.

Then suddenly, without altering his tone of voice, and without changing his expression, he added:

"Unless you appear before the grand jury within forty-eight hours and tell everything you know concerning the placing of money in escrow for the purpose of bribing members of the Municipal Assembly, I shall send you both to the penitentiary."

The visitors paled. "I—I," stammered Mr. Turner.

"That is all," said Mr. Folk, abruptly. "Good morning, gentlemen."

They left his office bewildered. Where had he learned the facts? That he had learned them they were confident. This was but one instance out of many that followed in which Mr. Folk communicated his confidence to others. Some persons called it hypnotism.

From the Four Courts Messrs. Turner and Stock went to the office of Charles P. Johnson, once lieutenant governor of Missouri, and famed throughout the West as a criminal lawyer, an attorney whose brilliancy had been marked in the Duestrow murder trial, the Jett murder trial and other cases of note. They told him what had occurred.

"Don't worry," said the Governor. "Sit down here and wait while I attend to the young man."

An hour later they met—the veteran of many a hard-fought legal battle and the youthful circuit attorney.

"What does all this mean?" cried the Governor, making himself comfortably at home.

"Exactly what I told your clients," replied Mr. Folk, smiling. "Unless they appear before the grand jury within forty-eight hours and tell everything they know concerning attempted bribery of the Assembly, I shall send them both to the penitentiary."

The Governor looked at the smiling face earnestly. He became convinced that the circuit attorney was in a position to do what he had threatened. He went back to his office. "You had better turn State's evidence," he said to the millionaire and his lieutenant.

No truer comparison of the position of Mr. Folk at this day can be made than with that of a poker player who has drawn to a flush and failed to fill, who knows there are strong hands out against him, yet who is so confident of winning on a bluff that he pushes to the center of the table not only all the money he has at hand, but all his worldly possessions, and moreover, adds to this total mortgages on everything in the future.

For Joseph W. Folk knew that if Charles H. Turner and Philip Stock refused to turn State's evidence he had not one iota of proof

to adduce against them in court and would be unable to fulfill his threat of sending them to the penitentiary. He knew that failure on their part to yield would not only put an end to the investigation then at hand, but would make him the laughing-stock of the community, therefore useless as a public officer, and discredited in this, his first trust, he would return to private life a failure.

These were facts which stared him in the face when Governor Johnson left his office for he did not know that the great lawyer had been convinced as he had wished to convince him; he knew nothing of the advice given by the attorney to his clients a half hour later; he only knew that the die had been cast and that the next play must come from the other side.

For thirty-six hours not a move was made. During that time Mr. Folk attended to his usual duties around the Four Courts and no one noticed any change in his demeanor; there was no lessening of his habitual smile.

Then Charles H. Turner, president of the St. Louis and Suburban Street Railroad Company, and Philip Stock, agent of the Brewers' Supply Company, knocked on the door of the grand jury room, and gaining admission, told the entire tale of what has become known as the Suburban bribery case.

Joseph W. Folk had won.^s

Having learned now where the money was, he went to the trust companies and compelled them to surrender it to him.

It will be remembered that Mr. Turner and Mr. Stock informed the grand jury that the bribe money had been deposited in safe deposit boxes of two trust companies. It came home to Mr. Folk with much force that no better evidence to place before a jury could be had than these bills—they would be as valuable as the *corpus delicti* in a murder case. And again, a suspicion lurked in his mind that the money might not be *en cache*, as had been confessed—it was barely possible that he had been told a cock-and-bull story; or before the cases should come to trial, peace might be made between the warring factions, and the money might be withdrawn. Then they could laugh at him.

He is not a person who does things by halves, and within twenty-four hours after the confession had been made, he went forth with one of his assistants and walked east on Pine street to the offices of the Lincoln Trust Company.

An unheard of demand was that made by the young circuit attorney. What! Open the safe deposit box belonging to another, and sealed under certain conditions set forth in writing? The officers said they could not think of doing such a thing.

Mr. Folk replied that they must not only think of it, but their minds must move swiftly; and he demanded that the box be opened for his inspection within fifteen minutes, enforcing the demand by stating that it was made by the State of Missouri, and not by a private individual.

The officers did think it over and at the end of the quarter of an hour they accompanied Mr. Folk into the vault and stood beside him while he fitted in the lock a key that had been given into his keeping by Stock, the go-between.

It was a solemn moment when they were assembled there, down below the street level. Separated from them by a thin steel wall were funds which a dozen men had risked their liberty to secure or else there was nothing, in which event this exposure was but a flash in the pan. The key turned, the lock snapped, the box, sliding easily in the well-oiled grooves, came forth and was placed on a table. Mr. Folk drew back the lid and there was revealed a package wrapped in paper. He took it up and tore the wrapper, exposing bills of various denominations—hundreds, fifties, tens and twenties. He counted them slowly and the sum total was \$75,000. The truth had been told him.

"Gentlemen," he said to the bank officials, "I shall leave this here under your charge. Nobody must be allowed entrance to this box unless by order of the court."

Then he continued farther east to the building occupied by the Mississippi Valley Trust Company, where he gave voice to a demand similar to that made upon the Lincoln Trust people.

Here there was more resistance. They would not listen to his proposal. A safe deposit box was sacred, and no person could open one unless his name appeared on the books, and in this instance both parties who subscribed to the agreement must be present, was their reply.

Mr. Folk argued for a few minutes, then noting that his words were falling upon deaf ears, he turned abruptly toward the door.

"I am going immediately to the Four Courts," he said. "Within an hour I shall cause to be issued a warrant charging you with being an accessory to the crime of bribery."

He was permitted to walk in the direction indicated for the distance of a block, then was called back. The officers had decided to let him see the interior of the box, rather than have any trouble. So a second procession wended its way into an iron room where valuables are stored, a second key was inserted in a lock, and again

a box was brought forth. Like the other, this contained a bundle, and the bundle, as in the other case, proved to be of greenbacks of different denominations, the sum total being \$60,000.

It has been freely stated by lawyers that Mr. Folk could not have enforced his demand to open the boxes had the bank officials desired to prevent his doing so, and if they had had time to seek counsel they might have resisted. But Mr. Folk gave them no time; moreover, he convinced them that he had power to punish if they failed to acquiesce, and thus he conquered.

After that day, at every trial of men indicted in connection with the Suburban bribery deal, these two bundles of money have been brought into court and Philip Stock asked to count them. And judges, lawyers, jurymen and spectators crane their necks while the legislative agent calls off in sing-song voice, "One hundred, two hundred, two fifty, three hundred," etc., until he announces, "One hundred and thirty-five thousand dollars, sir. Yes, these were the bills that were to have been divided."

It is evidence that cannot be disputed; a *corpus delicti* that identifies itself.*

As a result of these disclosures twenty-one members of the Municipal Assembly were indicted, as well as several of the men who had done the bribing, for as the investigation went on Mr. Folk obtained evidence not only of the Suburban Company case but of what were known as the Central Traction and the City Lighting deals. Nine were sent to the Penitentiary; others were convicted but released by the Supreme Court on technical grounds; others turned State's evidence and were not prosecuted, and still others escaped by fleeing to the four quarters of the globe.

But it was a hard fight the young Prosecuting Attorney had. Behind the boodlers stood not only the working politicians but the "big business" men of the city—the chief beneficiaries of the bribery deals. "Boss" Butler assured his henchmen in the Municipal Assembly that "the courts will reverse all Folk's cases, and, when Folk's term expires, we will all get off, and the

* *Id.*

fellows that have peached will go to jail.” Sure enough, his own case was reversed, and the same court gave rulings which made it necessary for Mr. Folk to retry nearly all of the cases.

And one of the leaders of the bar of St. Louis, a man who had sat upon the Federal bench, appealed to the jury not to send his client to jail for purchasing the votes which gave him a franchise which he sold for a fortune, because bribery was only a “conventional offense.”⁷

The Prosecuting Attorney’s success caused his enemies to take the most desperate measures to ruin Mr. Folk and drive him out of public life. But the revelations aroused the public throughout the State, and at the end of his term he was elected by a great majority to the governorship of Missouri.

Emil A. Meysenburg (p. 337), who was the first of the St. Louis legislators to confront a jury, was not one of the “combine” for which the money was waiting in the vaults of the trust companies. But having some worthless stock of a corporation in his possession, he let it be known to the officers of the Suburban Railway that their bill could not pass the Council of which he was a member unless they would buy it from him at his price. And to get this obstacle out of the way they acceded to his proposition and paid him the money he demanded.

⁷ “Enemies of the Republic” (Lincoln Steffens), 22 McClure, 58.

⁸ See *post*, p. 487. On one occasion, when a new member of the city combine expressed fears that trouble might follow a meeting at which \$2,500 each was passed around in bribe money, he was laughed at and assured that the political power of the boodlers was too great for any one to bring them to justice. Each of the nineteen, he was told, controlled his own ward, and they and the bribers were strong enough politically to annihilate any one who would insinuate wrong-doing against them.

Julius Lehman (p. 417) was one of the Delegates who swore before the grand jury that he knew nothing of the "combine" or of the money in the safe deposit box. The story of the "combine," as detailed in the argument of the Prosecuting Attorney in this case, is remarkable in that, while the facts were obtained through circumstantial evidence, subsequent confessions of members of the House of Delegates showed the story to be absolutely accurate. The jury returned a verdict of "Guilty," and this verdict was largely instrumental in causing other members of the House of Delegates to turn State's evidence, leading to the indictment, trial and conviction of the members of the Council and House of Delegates.

In an article in a New York magazine Mr. Folk wrote: "The tremendous wrong which some legislators and municipal representatives have for years carried on against Missouri taxpayers is a fact that is not merely whispered from lip to lip. The general public knows just how much and how it was robbed. For voting for a street railway franchise, in 1898, twenty-five out of twenty-eight members of the House of Delegates accepted bribes of \$3,000 apiece, and seven members of the City Council received from \$10,000 to \$17,500 each for their votes. One Councilman, with an eye to the main chance, accepted \$50,000 from the representative of the railway, and then returned \$25,000, that he had previously accepted from the interests opposed to the bill. He could not "honestly" earn this \$25,000, he said. Later he gave up the \$25,000, telling the franchise promoter that he desired the dignified sum of \$100,000. Hoping to receive this amount, he voted for the bill, and finally, after many trials and tribulations, he succeeded in getting \$5,000. The promoter obtained his franchise. It

cost him \$250,000 in bribes, not one cent of which went to the city, and he sold it for \$1,250,000, at a profit of \$1,000,000.” This was what was known as the Central Traction bill, which granted extraordinary and valuable rights of way to a corporation and also permitted the beneficiaries to parallel any track in the city. This was passed by both houses and vetoed by the Mayor and then passed over his veto notwithstanding the protest of nearly every newspaper in St. Louis. But it was only in the course of his investigation of the Suburban franchise in 1902 that Mr. Folk discovered this scandal, and then the question arose, Who could be punished? A Missouri statute barred a prosecution for bribery after the expiration of three years if the person accused had remained in the State during that period. The bribe-takers had remained there, but when it was discovered that the bribe-giver, *Robert M. Snyder* (p. 453), had removed to New York from his home in Kansas City and had been there for several years an indictment was found against him. His guilt was admitted and the whole scandal as charged by the State was confirmed. Snyder did not even go into the witness box and deny anything. His only defense was that he had lived in Missouri all the time and was exempt from punishment for that reason.

The trial of *Edward Butler* (p. 492) brings in full view that peculiar product of Nineteenth Century American political government, the city “boss.” Here was a man without ancestry or education, who did not even know when he was born, who was never once selected by either people or executive as fit to hold even the most humble public office; who never made a public address; who could not write even a dozen lines of good English, and yet he dictated to the voters of the city

* “Municipal Corruption.” *The Independent*, Vol. 55, p. 204.

and State whom they should nominate and elect for their representatives in State, national, and municipal affairs, and who should be their mayors and their judges.

His guilt was not denied by any of the judges to whom he appealed, and yet he was set free by the Supreme Court for reasons which must sound so absurd when repeated to a layman that it is little wonder that our judiciary has lost the confidence of the people. "Butler," said the Court, "is not guilty of bribery because the removal of garbage is not a measure affecting the public health but is merely a public improvement. The Board of Public Health had no right to give him the contract; it ought to have been given by another body—the Board of Public Improvements." Now ninety-nine men out of one hundred, be they laymen or lawyers, would certainly look upon garbage removal as being very closely connected with the public health, and as a matter of history the Board of Health did award the contract to Butler's company, which collected hundreds of thousands of dollars from the city, under the award which Butler attempted to bribe Dr. Chapman to vote for. And the Court's second reason is even more unthinkable. "When Butler offered him the money the Mayor had not signed the ordinance giving the Board of Health the power to award contracts for collecting the city garbage." Think of that as the law of the land in this day of private contracts for war munitions! A manufacturer of rifles goes to the Secretary of War and says to him: "Mr. Secretary, the Congress has passed a bill to have ten million new rifles manufactured; the President will sign the bill tomorrow. I will give you five million dollars if you will give me the contract." Fancy anybody deciding that this was not an attempt to bribe! But it must not

PREFACE TO VOLUME NINE.

be forgotten that the three judges who set Butler free were the three judges who about the same time released a man who had been convicted of a foul crime on the person of a young female in his charge for the only reason that the indictment said that the offense had been committed "against the peace and dignity of State" when it should have said "against the peace and dignity of *the* State," a ruling that caused the president of the American Bar Association—himself a St. Louis lawyer—to use this strong language in addressing the lawyers of the country, assembled in convention at Detroit in the year 1909:

"A man having a young woman under his protection as his ward ravishes her. Upon indictment by the grand jury and upon trial by a petit jury, he is found guilty. Upon appeal the conviction is set aside, because by carelessness of the draughtsman of the indictment, or by the oversight of the copyist, the definite article *the* was omitted from the concluding phrase of the indictment. Suppose then a similar crime were committed in my neighborhood and the natural resentment such a crime provokes in the breast of every man would kindle the people to mob violence against the offender. Let me come out and try to quiet that mob and say: 'Take not justice into your own hands, but leave it to the orderly administration of the law.' What do you think would be the answer? 'We have no respect for the law which puts the definite article *the* in sanctity above the chastity of our wives and daughters.' Let us make an end of these things which bring the law into contempt and disrepute and which make you and me ashamed of it when we are arraigned at the bar of the common sense of mankind."¹⁰

¹⁰ "While Edward Butler never held political office, no man ever exerted anything like the influence on municipal legislation that he did. In the days before Governor Folk as circuit attorney of St. Louis began his battle against bribery, any measure that Butler advocated could be passed through the House of Delegates, which in those days was governed by a combine. Sometimes it was made up of more Republicans than Democrats and sometimes it was the reverse. But no matter what political party preponderated in numbers Butler or his lieutenants dominated the situation. Any proposed legislation that bore the Butler stamp of approval was

The second trial of *Julius Lehman* (p. 567) upon the bribery indictment brought to the stand some of the hoodlums who had confessed; and what a sink of corruption it revealed! Nearly \$50,000 had to be distributed among the city fathers before they would consent to pass a necessary bill for the lighting of the city streets. This money was distributed through an arrangement actually made on the floor of the House passed. If it was opposed by Butler it failed. It was because of his intimate dealings with the House of Delegates that Col. Butler became involved in the famous boodle trials prosecuted by Governor Folk. It was charged that in his capacity as legislative agent he had resorted to bribery, and the indictment of Butler followed indictments of nineteen members of the House and several in the Council. Before he was indicted himself, Col. Butler made no secret of his sympathy for the members of the House of Delegates charged with accepting bribes. He jested about the crusade inaugurated by Folk, thinking it would result like many other crusades had. He went to the front for the members of the 'combine' and at one time he was on bonds aggregating \$150,000 for their appearance when their cases were called. Then, following the indictments against them, came an indictment against Butler himself. Still he thought the cases were mere 'flashes in the pan,' as he expressed it, and had no fears as to the ultimate result. That was before any of the men had faced trial. When they went to trial and some of them were found guilty and were sentenced to terms in the penitentiary, it became a serious matter. He took a change of venue. He was prosecuted vigorously by Folk and was defended as vigorously by his own attorneys. Scores of men who had been befriended by Butler in the past accompanied him to Boone County, where his case had been sent on a change of venue. They rallied to the support of the 'old man,' as they affectionately termed him, and when he was adjudged guilty they were stunned. This conviction broke Butler's heart. But the grim old campaigner did not show it. He bore the surprise and disappointment with as little show of emotion as he did after he had won the election victory. His lawyers appealed to the Supreme Court. Here the case was reversed. He was freed, but the strain had told on him, and it was plain that he would never again wield the political scepter that he had held so long. The organization he had built was permitted to rust. At his death it was but a mere reminiscence." *St. Louis Republic*, September 10, 1911.

of Delegates, the nineteen members of the combine meeting to receive their portion of the plunder at a supposed "birthday party" at the home of one of its members.¹¹

The *Ku Klux Klan* prosecutions in South Carolina (pp. 593-860), which were carried on by the National Government in the same way and with similar results in the other Southern States, give a good picture of these terrible years after the war and one which cannot be found elsewhere, for the history of the reconstruction policy of the radical Republicans of the North and its disastrous effects has yet to be written. Nor has the history of the *Ku Klux* ever been written; for it disappeared from Southern life as it came into it—shrouded in the deepest mystery. But here is a narrative of its birth:

"Its birthplace was Pulaski, in one of the southern tiers of counties in Middle Tennessee—a town of three thousand inhabitants. Previous to the war the people possessed wealth and culture. The first was lost in the general wreck. Now the most intimate association with them fails to disclose a trace of the diabolism which, according to the popular idea, one would expect to find characterizing the people among whom the *Ku Klux Klan* originated. A male college and a female seminary are located at Pulaski, and receive liberal patronage. It is a town of churches. There, in 1866, the name *Ku Klux* first fell from human lips. There began a movement which in a short time spread as far north as Virginia and as far south as Texas, and which for a period convulsed the country. Proclamations were fulminated against the Klan by the President and by the Governors of States; and hostile statutes were enacted both by State and National legislatures, for there had become associated with the name of *Ku Klux*

¹¹ Mayor Henry Ziegenhein, called "Uncle Henry," was a "good fellow," "one of the boys," and though it was during his administration that the city went to rot, his opponents talked only of incompetence and neglect, and repeated such stories as that of his famous reply to some citizens who complained because certain streets were not lighted: "You have the moon yet—ain't it?" See *post*, p. 542.

Klan gross mistakes and lawless deeds of violence. When the war ended in 1865 the young men of Pulaaki who escaped death on the battle-field returned home and passed through a period of enforced inactivity. In some respects it was more trying than the ordeal of war which lay behind them. The reaction which followed the excitement of army scenes and service was intense. There was nothing to relieve it. They could not engage in active business or professional pursuits. Their business habits were broken up. None had capital with which to conduct agricultural pursuits or to engage in mercantile enterprises. And this restlessness was made more intense by the total lack of amusements and social diversions which prevail wherever society is in a normal condition. One evening in June, 1866, a few of these young men met in the office of one of the most prominent members of the Pulaski bar. In the course of the conversation one of the number said: "Boys, let us get up a club or a society of some description." The committee appointed to select a name reported that they had found the task difficult, and had not made a selection. They explained that they had been trying to discover or invent a name which would be in some degree suggestive of the character and objects of the society. They mentioned several names which they had been considering. In this number was the name "Kukloi," from the Greek word "kuklos," meaning a band or a circle. At mention of this, some one cried out: "Call it Ku Klux!" "Klan" at once suggested itself, and was added to complete the alliteration. So, instead of adopting a name, as was the first intention, which had a definite meaning, they chose one which to the proposer and to everyone else was absolutely meaningless.

At the Nashville convention when it became the policy of the Klan to appear in public, an order was issued by the Grand Dragon of the Realm of Tennessee to the Grand Cyclops of the Provinces for a general parade, in the capital town of each province, on the night of the 4th of July, 1867. It will be sufficient for this narrative to describe that parade as witnessed by the citizens of Pulaaki. On the morning of that day the citizens found the sidewalks thickly strewn with slips of paper bearing the printed words: "The Ku Klux will parade the streets tonight." This announcement created great excitement. The people supposed that their curiosity, so long baffled, would now be gratified. They were confident that this parade would at least afford them the opportunity of learning who belonged to Ku Klux Klan.

Soon after nightfall the streets were lined with an expectant and excited throng of people. Many came from the surrounding country. The members of the Klan in the county left their homes in the afternoon and traveled alone or in squads of two or three,

with their paraphernalia carefully concealed. If questioned, they answered they were going to Pulaski to see the Ku Klux parade. After nightfall they assembled at designated points near the four main roads leading into the town. Here they donned their robes and disguises, and put covers of great gaudy materials on their horses. A skyrocket sent up from a point in the town was the signal to mount and move. The different companies met and joined each other on the public square in perfect silence; the discipline appeared to be admirable. Not a word was spoken. Necessary orders were given by means of the whistles. In single file, in deathlike stillness, with funereal slowness, they marched and counter marched throughout the town. While the column was headed north on one street it was going south on another. By crossing over in opposite directions the lines were kept up in almost unbroken continuity. The effect was to create the impression of vast numbers. This marching and countermarching was kept up for about two hours, and the Klan departed as noiselessly as they came. The public were more than ever mystified. The efforts of the most curious to find out who were Ku Klux failed. The gentleman from the county was confident that he could identify the riders by the horses. But, as we have said, the horses were disguised as well as the riders. Determined not to be baffled, during a halt of the column he lifted the cover of a horse that was near him, and recognized his own steed and saddle, on which he had ridden into town. The town people were on the alert to see who of the young men of the town would be with the Ku Klux. All of them, almost without exception, were marked mingling freely and conspicuously with the spectators.

Perhaps the greatest illusion produced was in regard to the numbers taking part in the parade. Reputable citizens were confident that the number was not less than three thousand. Others whose imaginations were more easily wrought upon, were quite certain there were ten thousand. The truth is that the number of Ku Klux in the parade did not exceed four hundred. This delusion in regard to numbers prevailed wherever the Ku Klux appeared. It illustrates how little the testimony of even an eye witness is worth in regard to anything which makes a deep impression on him by reason of its mysteriousness."¹²

No one can deny that the law had been violated and gross outrages had been perpetrated by the white citi-

¹² The Ku Klux Klan. Its Origin, Growth, and Development. D. L. Wilson. The Century, 28—398.

zens of York County, South Carolina, who were brought before the Federal court at Columbia in the year 1871. But the trials were a judicial farce. Both the grand¹³ and petit juries¹⁴ were packed with ignorant blacks and rascally carpet-baggers. And the ex-slaves, drunk with their newly acquired power, registered their verdicts of guilty automatically, without regard to proof. They convicted *Thomas B. Whitesides* (p. 786), though the principal witness to his presence at the raid had stated on various occasions that he was mistaken in the man, and though the prisoner showed conclusively that during the entire night of the raid he was at the home of a sick patient, and *John S. Millar* (p. 788), though outside of his having attended a meeting of the Klan, he was not connected in any way, so far as the evidence went, with any criminal act. Under circumstances like these the retreat of *Dr. Edward T. Avery* (p. 805) to the friendly soil of Canada can hardly be criticised, though it was the subject of a sham prosecution of his counsel by the indignant judge (*F. W. McMaster*, p. 861).

John Merryman (p. 879) was guilty of recruiting for the Confederate army within the Union territory, and it was no time, as President Lincoln subsequently

¹³ "The grand jury was composed of six white men and twenty-one colored. Of the latter, five could not write their own names. The foreman was B. F. Jackson, a carpet-bagger, then or previously a minister of the Northern Methodist Church. This fellow, notoriously bitter towards the white people, had been mixed up with some of the frauds of the Radical government of South Carolina and had been himself guilty of the fraudulent misappropriation of other people's money." Reynolds' *Reconstruction of South Carolina*, p. 202.

¹⁴ "The panel had ten white men and thirty-nine colored. Of the white men only four were not in actual sympathy with the Radical party. Of the colored men several were active politicians, working with that party." Reynolds', p. 203.

explained, to split hairs as to who exactly was the person to preserve the country. The Constitution says that the writ of *habeas corpus* shall not be suspended, "unless when, in cases of rebellion or invasion, the public safety may require it." But nothing is said as to who is to suspend it in such a case, and as Congress was not in session at this time, "I decided," said Mr. Lincoln, "that this was a case of rebellion and that the public safety required the suspension of the writ. As the provision was plainly made for a dangerous emergency, I cannot bring myself to believe that the framers of that instrument intended that in every case the danger should run its course until Congress could be called together."

Chief Justice Taney filed his written opinion that the President's act was unconstitutional; but nobody paid any more attention to it than they would had he and his colleagues decided that the Northern army had no right to invade Virginia, or to restore the Union. We are at war again, and again the country is in danger, and we have people who actually imagine that a bench of judges could stop it all by a judicial decree. Only the other day lawyers representing the United States on the one side and the German sympathizer, or "pacifist," as he calls himself, on the other, gravely argued before the High Court at Washington whether it is constitutional for President Wilson and the Congress to send an army to France to defend our liberty and our civilization against German autocracy and German barbarism. Suppose a majority of these nine old gentlemen in their silk robes had declared that it was illegal, would their decision have any more effect on the determination of our country to make the world safe for democracy than Taney's fulmination had?

TABLE OF TRIALS

<i>The Trial of JOHN H. SURRETT for Conspiracy and Murder Washington, District of Columbia, 1867</i>	1-336
<i>The Trial of EMIL A. MEYSENBURG for Bribery, St. Louis, Missouri, 1902</i>	337-416
<i>The Trial of JULIUS LEHMAN for Perjury, St. Louis, Mis- souri, 1902</i>	417-452
<i>The Trial of ROBERT M. SNYDER for Bribery, St. Louis, Missouri, 1902</i>	453-491
<i>The Trial of EDWARD BUTLER for Bribery, Columbia, Mis- souri, November, 1902</i>	492-566
<i>The Trial of JULIUS LEHMAN for Bribery, St. Louis, Mis- souri, 1903</i>	567-592
<i>The Trials of MEMBERS OF THE KU KLUX ORGANIZA- TION for Conspiracy, Columbia, South Carolina, 1871</i>	593-600
<i>The Trial of SHEROD CHILDERS, EVANS MURPHY, WIL- LIAM MONTGOMERY, and HEZEKIAH PORTER for Conspiracy, Columbia, South Carolina, 1871</i>	601-610
<i>The Trial of ROBERT HAYES MITCHELL for Conspiracy, Columbia, South Carolina, 1871</i>	611-735
<i>The Trial of JOHN W. MITCHELL and THOMAS B. WHITE- SIDES for Conspiracy, Columbia, South Carolina, 1871.</i>	736-787
<i>The Trial of JOHN S. MILLAR for Conspiracy, Columbia, South Carolina, 1871</i>	788-804
<i>The Trial of EDWARD T. AVERY for Conspiracy, Columbia, South Carolina, 1871</i>	805-838
<i>The Trial of SYLVANUS, WILLIAM, HUGH H. and JAMES B. SHEARER, for Conspiracy, Columbia, South Carolina, 1871</i>	839-841
<i>The Trial of HENRY C. WARLICK and OTHERS for Con- spiracy, Columbia, South Carolina, 1872</i>	842-860
<i>The Trial of F. W. McMASTER for Contempt of Court, Columbia, South Carolina, 1872</i>	861-878
<i>The Case of JOHN MERRYMAN on Habeas Corpus, Balti- more, Maryland, 1861</i>	879-896

THE TRIAL OF JOHN H. SURRETT FOR CONSPIRACY AND MURDER, WASH- INGTON, D. C., 1867.

THE NARRATIVE.

Mrs. Surratt's son John, who had been an intimate friend of Booth, was supposed by the Government to have left Washington for Canada on the evening of the assassination. He remained there practically in hiding, and sailed from Quebec to Liverpool on September 15th, 1865. From there he went to Rome and enlisted in the Papal Zouaves under the name of John Watson. He was traced by the American detectives and arrested, and the Papal government, although we had no extradition treaty with it, agreed to surrender him, but he escaped from the Italian custody to Egypt, where he was apprehended and brought back to the United States, and in June, 1867, was put on trial before the Supreme Court of the District of Columbia as one of the murderers of President Lincoln.

The defense was that though Surratt had been one of those who had planned to abduct President Lincoln, yet when the scheme fell through he had not been a party to Booth's crime and had left Washington for Canada some time before the assassination. The Government, however, produced strong evidence to disprove the alibi. Sergeant Dye swore that he, with a companion, was in front of Ford's theater when the President's carriage drove up. He saw Booth and two men talking in front of the theater. One called out the time just before Booth entered the theater and he recognized the prisoner Surratt as that man. When news came that the President was shot he started for his barracks, and passing along a street a woman hoisted a window and asked what was wrong downtown, and he told her President Lincoln was shot. She asked who did it, and was told Wilkes Booth. She

then asked the sergeant how he knew, and he said a man saw him do it. The woman was Mrs. Surratt.

One Reed, a tailor, testified that he knew John H. Surratt since he was a boy and that he saw him at half-past two o'clock on the day of the murder, on Pennsylvania Avenue and that they bowed to each other as they passed, and Dr. Cleaver said he met and spoke to Surratt on the street on the day of the assassination. A barber by the name of Wood swore that he shaved Surratt and dressed his hair between nine and ten o'clock on the morning of the 14th of April; that Surratt was dusty as if he had just come in from a trip; and that Booth and O'Laughlin were in the barber shop at the same time.

John Lee, a deputy marshal, swore that he saw John H. Surratt on Pennsylvania Avenue on the 14th. Scipiano Grillo was with Herold in Willard's Hotel on the 14th looking for General Robert E. Lee, whom they heard had arrived. While there Herold was engaged in conversation with a man and Herold asked him if he was going tonight, and he said, yes. Grillo did not know the man then, but recognized him at the trial as being John H. Surratt. A colored servant in the Surratt family testified that when Mrs. Surratt returned from Surrattsville with Mr. Weichmann about eight o'clock on April 14th, she carried supper to Mr. Weichmann. Then Mrs. Surratt told her to bring a pot of tea to a gentleman. When it was taken to Mrs. Surratt she said, "This is my son." The servant recognized the man as John H. Surratt.

But many witnesses for the defense gave evidence showing that Surratt could not have been in Washington on April 14th, and the result was that the jury, after being in consultation three days, told the judge that it was impossible for them to come to an agreement and were discharged.

Surratt was kept in the Old Capitol Prison for some months, but was finally liberated on twenty-five thousand dollars bail. He was again arraigned for trial upon charges of conspiracy and treason. But the law in such cases required

that the indictment should be found within two years from the time of the alleged offense, unless the respondent was a "fugitive from justice." More than this time had intervened, and there was no averment in the indictment that he was a fugitive. The court therefore released him.

THE TRIAL.¹

In the Supreme Court of the District of Columbia, Washington, D. C., June, 1867.

HON. GEORGE P. FISHER,² Judge.

June 10.

When the military commission tried Mrs. Surratt and others for conspiracy and murder (8 Am. St. Tr. 33), her son John H. Surratt, was in concealment in Canada; he was afterwards traced to Italy, and finally captured in Egypt. A Grand Jury of the District of Columbia indicted him, and he was now brought to trial, after a lapse of about two years from the conviction and execution of his mother under an indictment for murder. There were four counts. In the first Surratt was charged with the murder of Abraham Lincoln, in the second, he was charged with the same crime, jointly with John Wilkes Booth. In the third and fourth he was charged with the same crime jointly with Booth, Herold, Atzerodt, Payne and Mrs. Surratt.

¹ "The Reporter. A Periodical Devoted to Religion, Law, Legislation and Public Events. Conducted by R. Sutton, Chief of the Official Corps of Reporters of the U. S. Senate, and D. F. Murphy and James J. Murphy, its principal members." This was a weekly Law Journal published in Washington. Its issues from June 24 to September 24, 1867, contained nothing but a verbatim report of the Surratt Trial, making in all a large volume in two parts of over 700 pages.

² FISHER, GEORGE P. (1817-1899.) Born Kent Co., Delaware. Member Delaware Legislature, 1843; Secretary of State of Delaware, 1846; Confidential Clerk, State Department, Washington, 1849; Attorney General, Delaware, 1857-1860; Representative in Congress, 1861-1863. Appointed a Judge of the Supreme Court of the District of Columbia; he resigned after a short service to become District Attorney. Died in Washington.

He pleaded *Not Guilty* and the trial began today.

E. C. Carrington,³ District Attorney; *Nathaniel Wilson*,⁴ Assistant District Attorney; *Edwards Pierrepont*⁵ and *A. G. Riddle*,⁶ for the prosecution.

Joseph H. Bradley, Sr., *Joseph H. Bradley, Jr.*,⁷ and *Richard T. Merrick*,⁸ for the defense.

³CARRINGTON, EDWARD C. United States District Attorney, Washington, 1863-1870.

⁴WILSON, NATHANIEL. Born Zanesville, Ohio, 1836; graduated Shurtleff College, Ill., 1856; admitted to bar, 1861, but removed to Washington, where he soon acquired a large practice; assistant U. S. Attorney-General, 1862-1865; Judge-Advocate, 1862-1864; special counsel to Navy Department, 1863-1864.

⁵PIERREPONT, EDWARDS. (1817-1892.) Born New Haven, Conn.; graduated Yale, 1837; law school, 1840; began practice at Columbus, Ohio; removed to New York City, where he became eminent at the bar; Judge Supreme Court 1857-1860; member Constitutional Convention, 1867; United States District Attorney, N. Y., 1870; Attorney-General of the United States, 1875; Minister to England, 1876; LL. D. Columbia and Yale; D. C. L. Oxford.

⁶RIDDLE, ALBERT GALLATIN. (1816-1902.) Born Monson, Mass. Removed with his family in his infancy to Ohio, where he received a common school education, and studied law; admitted to bar, 1840; Prosecuting Attorney, 1840-1846; member Ohio Legislature, 1848; Prosecuting Attorney (Cleveland), 1859; member of Congress, 1861-1863; United States Consul, Mexico, 1863; began practice of law at Washington, D. C., 1864; Law Officer District of Columbia, 1877-1889; author of many literary works. Died in Washington.

⁷BRADLEY, JOSEPH HABERSHAM. (1802-1887.) Born Washington, D. C., son of Abraham Bradley, Assistant Postmaster-General of the U. S. under President Monroe; graduated Yale, 1821; studied law and admitted to bar in Washington, 1824, where he was actively engaged in practice for nearly fifty years.

⁸BRADLEY, JOSEPH H., JR. (1831-1874.) Second son of Joseph Habersham Bradley; born Washington, D. C.; educated at Hallowell School, Alexandria, Va.; attended University of Virginia and Yale law school. Studied law in father's office. On account of ill-health joined an U. S. exploring expedition to the Isthmus of Tehuantepec for a year. Admitted to bar, 1854. Was arrested and held as Booth at time of Lincoln's assassination until he secured witnesses to prove his identity. Attorney for Washington and Georgetown Railroad Company for a number of years. One of the founders of the Young Men's Christian Association and president of the Washington branch in 1858-1859. Died in Washington.

⁹MERRICK, RICHARD THOMAS. (1826-1885.) Born Charles Co., Md. Commanded a company in the Mexican War, and on his re-

JOHN H. SURBATT.

Mr. Carrington moved that the panel of jurors for the trial of the case be quashed for the reason that it had not been drawn and selected according to law.

June 11, 12.

The question of the jury panel was argued by *Mr. Merrick*, *Mr. Pierrepont* and *Mr. Bradley, Sr.*

Judge FISHER ruled that the present panel be set aside, and that the marshal of the District of Columbia do proceed to summon a jury of talesmen.

June 12-15.

The impanelling of the jury occupied these days, Judge WYLIE¹⁰ presiding on the 14th and 15th on account of the illness of Judge FISHER.

The following jurors were finally selected and sworn: W. B. Todd, Robert Ball, J. Russell Barr, Thomas Berry, George A. Bohrer, C. G. Schneider, James Y. Davis, Columbus Alexander, William McLean, Benjamin F. Morsell, B. E. Gittings, W. W. Birth.

June 17.

MR. WILSON'S OPENING FOR THE PROSECUTION.

Mr. Wilson. May it please your Honor: gentlemen of the jury. You are all doubtless aware that it is customary in criminal cases for the prosecution, at the beginning of a trial, to inform the jury of the nature of the offense to be inquired into, and of the proof that will be offered in support of the charges of the indictment. By making such a statement I hope to aid you in clearly ascertaining the work that is before us, and in apprehending the relevancy and significance of the testimony that will be produced as the case proceeds.

The Grand Jury of the District of Columbia have indicted

turn practiced law and was elected to the Legislature. Removed to Chicago and practiced there and then to Washington, D. C., where he became a leader of the bar. Lecturer on Constitutional Law, Georgetown University. Died in Washington.

¹⁰ 8 Am. St. Tr. 651.

the prisoner at the bar, John H. Surratt, as one of the murderers of Abraham Lincoln. It has become your duty, gentlemen of the jury, to judge whether he be guilty or innocent of that charge—a duty than which one more solemn or momentous never was committed to human intelligence. You are to turn back the leaves of history to that red page on which is recorded in letters of blood the awful incidents of that April night on which the assassin's work was done on the body of the Chief Magistrate of the American Republic; a night on which, for the first time in our existence as a nation, a blow was struck with the fell purpose of destroying not only human life, but the life of the nation, the life of liberty itself. Though more than two years have passed by since then, you scarcely need witnesses to describe to you the scene in Ford's theater as it was visible in the last hour of the President's conscious life. It has been present to your thoughts a thousand times since then. A vast audience were assembled, whose hearts were throbbing with a new joy, born of victory and peace, and above them the object of their gratitude and reverence—he who had borne the nation's burdens through many and disastrous years—sat tranquil and at rest at last, a victor indeed, but a victor in whose generous heart triumph awakened no emotions save those of kindness, of forgiveness, and of charity. To him, in that hour of supreme tranquillity, to him, in the charmed circle of friendship and affection, there came the form of sudden and terrible death.

Persons who were there present will tell you that at about twenty minutes past ten o'clock that night, the night of the 14th of April, 1865, John Wilkes Booth, armed with pistol and knife, passed rapidly from the front door of the theater, ascended to the dress circle, and entered the President's box. By the discharge of a pistol he inflicted a death wound, then leaped upon the stage, and passing rapidly across it, disappeared into the darkness of the night.

We shall prove to your entire satisfaction, by competent and credible witnesses, that at that time the prisoner at the

JOHN H. SURREATT.

bar was there present aiding and abetting that murder, and that at twenty minutes past ten o'clock that night he was in front of that theater, in company with Booth. You shall hear what he there said and did. You shall see him there in the light of the lamp that shone full upon his face. You shall know that his cool and calculating malice was the director of the bullet that pierced the brain of the President, and the knife that fell upon the face of the venerable Secretary of State. You shall know that the prisoner at the bar was the contriver of that villainy, and that from the presence of the prisoner, Booth, drunk with theatric passion and traitorous hate, rushed directly to the execution of their mutual will.

We shall further prove to you that their companionship upon that occasion was not an accidental nor an unexpected one, but that the butchery that ensued was the ripe result of a long premeditated plot, in which the prisoner was the chief conspirator. It will be proved to you that he, a traitor to the Government that protected him, a spy in the employ of the enemies of his country, in the year 1864 and 1865, passed repeatedly from Richmond to Washington, from Washington to Canada, weaving the web of his nefarious scheme, plotting the overthrow of this Government, the defeat of its armies, and the slaughter of his countrymen; and, as showing the venom of his intent, as showing a mind insensible to every moral obligation, and fatally bent on mischief, we shall prove his gleeful boasts that, during these journeys, he had shot down in cold blood weak and unarmed Union soldiers fleeing from rebel prisons. It will be proved to you that he made his home in this city the rendezvous for the tools and agents in what he called his "bloody work," and that his hand provided and deposited at Surrattsville, in a convenient place, the very weapons obtained by Booth while escaping, one of which fell or was wrenched from Booth's death-grip at the moment of his capture.

While in Montreal, Canada, where he had gone from Richmond, on the 10th of April, the Monday before the assassination, Surratt received a summons from his co-conspirator

Booth, requiring his immediate presence in this city. In obedience to that preconcerted signal he at once left Canada, and arrived here on the 13th. By numerous, I had almost said a multitude of witnesses, we shall make the proof to be as clear as the noon-day sun and as convincing, that he was here during the day of that fatal Friday, as well as present at the theater at night, as I have before stated. We shall show him to you on Pennsylvania avenue, booted and spurred, awaiting the arrival of the fatal moment; we shall show him in conference with Herold in the evening; we shall show him purchasing a contrivance for disguise an hour or two before the murder. When the last blow had been struck, when he had done his utmost to bring anarchy and desolation upon his native land, he turned his back upon the abomination he had wrought, he turned his back upon his home and kindred, and commenced his shuddering flight.

We shall trace that flight, because in law flight is the criminal's inarticulate confession, and because it happened in this case, as it always happens and always must happen, that in some moment of fear or of elation or of fancied security, he, too, to others confessed his guilty deeds. He fled to Canada. We will prove to you the hour of his arrival there, and the route he took. He there found safe concealment, and remained there several months, voluntarily absenting himself from his mother, during all the time when the conspiracy trials were here in progress, during which it was in his power to give testimony that might or might not have brought light upon the transaction. In the following September he again took flight. Still in disguise, with painted face and painted hair and painted beard, he took ship to cross the Atlantic. In mid-ocean he revealed himself and related his exploits, and spoke freely of his connection with Booth in the conspiracy relating to the President. He rejoiced in the death of the President; he lifted his impious hand to heaven, and expressed the wish that he might live to return to America and serve Andrew Johnson as Abraham Lincoln had been served. He was hidden for a time in England, and found there sym-

pathy and hospitality; but soon was again made an outcast and a wanderer by his guilty secret. From England he went to Rome, and hid himself in the ranks of the Papal army, in the guise of a private soldier. Having placed almost the diameter of the globe between himself and the dead body of his victim, he might well fancy that pursuit was baffled; but by the happenings of one of those events which we sometimes call accidents, but which are indeed the mysterious means by which omniscient and omnipotent justice reveals and punishes the doers of evil, he was discovered by an acquaintance of his boyhood. When denial would not avail, he admitted his identity, and avowed his guilt in these memorable words: "I have done the Yankees as much harm as I could. We have killed Lincoln, the niggers' friend." The man to whom Surratt made this statement did as it was his duty to do—he made known his discovery to the American minister. There is no treaty of extradition with the Papal States; but so heinous is the crime with which Surratt is charged, such bad notoriety had his name obtained, that his Holiness the Pope and Cardinal Antonelli ordered his arrest without waiting for a formal demand from the American Government. Having him arrested, he escaped from his guards by a leap down the precipice—a leap impossible to any but one to whom conscience made life valueless. He made his way to Naples, and then took passage in a steamer that carried him across the Mediterranean sea to Alexandria in Egypt. He was pursued, not by the "bloodhounds of the law," that seem to haunt the imagination of the prisoner's counsel, but by the very elements, by destruction itself, made a bond-slave in the service of justice. The inexorable lightning thrilled along the wires that stretch through the waste of waters that roll between the shores of Italy and the shores of Egypt, and spoke its word of terrible command from Alexandria, and, aghast and manacled, he was made to turn his face toward the land he had polluted by the curse of murder. He is here at last to be tried for his crime.

And when the facts which I have stated have been proved,

as proved they assuredly will be if anything is ever proven by human testimony; and when all the subterfuges of the defense and all contrivances for alibis have been disproved, as disproved they assuredly will be, we, having done our duty in furnishing you with that proof of the prisoner's guilt, in the name of the civilization he has dishonored, in the name of the country he has betrayed and disgraced, in the name of the law he has violated and defied, shall demand of you that retribution, though tardily, shall yet be surely done upon the shedder of innocent and precious blood.

THE WITNESSES FOR THE PROSECUTION.

June 17-July 6.

The examination of witnesses for the prosecution began on June 17th and concluded on July 6th.

Most of the witnesses in the trial before the Military Commission (8 Am. St. Tr. 44, *et seq.*) were examined and their

testimony given there was for the most part repeated. For this reason and because the counsel in their summing up read from the record all the relevant testimony, it is unnecessary to print it again here.

THE OPENING FOR THE DEFENSE BY MR. BRADLEY, JR.

July 6.

Mr. Bradley, Jr. May it please your Honor: gentlemen of the jury, we have at last arrived at that stage of this case when an opportunity is afforded to the prisoner to say something by way of defense, not only of his character, of his own reputation, of his life, and of his honor, but also, as it shall arise incidentally in the discussion of the evidence before you, something to vindicate the pure fame of his departed mother. Perhaps no case has ever arisen in the annals of any country presenting more extraordinary features than the one which you have under consideration. Perhaps no jury ever was called upon to discharge a higher, more difficult, and more sacred duty than you are. Surely, gentlemen, our confidence in you is not misplaced, that you will do justice, whole justice, irrespective of the rank, position and sta-

tion of the parties interested in the issue of this case. And I may be permitted here to congratulate you that you are acceptable not only to the defense, but that you have also the endorsement of the learned gentlemen who represent the Government here. You will recollect that in the early stage of this case it took us one week to get a jury. We were willing to take any twelve honest men from this District, to lay our case before them, and trust the issue in their hands. We were willing, for the sake of a jury—anxious for a hearing—to take any twenty-six men that might be drawn from the box of talesmen, and let the gentlemen on the other side strike off their number, and we strike ours, and take the residue to represent the interests of the public and the prisoner, before whom to present his case. All those propositions failed; the learned gentlemen resisted every one of that sort, except a proposition by way of compromise; and they succeeded in satisfying the mind of your honor that the original jury which was summoned in this case—men as honest as yourselves—were not suitably summoned according to law. Thus we were compelled to call upon you to render us your aid and wisdom in this matter.

Gentlemen, I have stated that we are satisfied with this jury; and why are we satisfied? I see before me represented, not only the Commonwealth itself, but men who represent the social interests of this District, its material wealth, its intelligence, and its honesty—men who in this case have a double duty to perform; not only to stand between the innocent and the accused, but also to vindicate the reputation of this District, which has been so much defamed as to the disposition of its people to discharge the duty of good citizens. We have also a jury before us who cannot be charged with having the taint of any religious or any other bias, for you represent different preferences in modes of worship and opposite opinions upon the political questions of the day. When the verdict goes out to the world, sanctioned by the endorsement of the Government, the verdict of a jury constituted as they would have it to be, a jury entirely satisfactory

to ourselves, it is to be hoped that, whether it be for or against the prisoner, it will go far towards settling this question, which has agitated the country to its very center for two years past, and the mysteries, the doubts, the uncertainties which have covered the tragic event you are here to consider may be dispelled, and the people arrive at last at some settled and intelligent opinion as to who the really guilty parties were.

We come to you, gentlemen, under the profound conviction of the entire innocence of the accused; a conviction which is not one of sympathy, not such as counsel ordinarily feel for the parties whom they represent, but one at which we have arrived by sober, careful, painstaking investigation, extending over a period of many weeks, covering a space of country extending from the Canadas to Mexico; by personal conferences with witnesses whom we know will be believed by this jury; by conference with men of unimpeachable integrity; by conference with men who have no interest in this matter except to render to you the truth and nothing but the truth; men to whom the prisoner at the bar is a stranger; men who by reason of the marking hand of Providence have been pointed out to us, step by step, as the persons who could account for his absence from this place and his presence at a distant point at the time this tragic event is laid.

Surely, gentlemen of the jury, we may be pardoned for having some fervor on this subject, with such convictions upon our minds; and if, upon hearing the testimony, you arrive at the same conclusion that we do, all we ask is that you will give the prisoner the full benefit of what we shall adduce in his behalf.

I have said this case presents some of the most extraordinary features that were ever heard of. The maxim of the law is, that the prisoner at the bar is innocent of all offense until he is proved to be guilty; and the law casts the burden of proof upon the Government. When a man is brought into this court of justice, he is one of yourselves, of pure character and reputation, with all the presumptions of innocence

about him. He stands, like any other citizen, upon that Constitution which secures to every man the right to a full, fair, free trial before a jury of his countrymen. He appeals to you as a fellow-citizen, not as a criminal, not as a felon. He appeals to you to render to him justice as you would have justice rendered to you. But what does the learned gentleman who opened this case do in his opening speech, before a single item of evidence was offered to you, before one of their eighty odd witnesses is put upon the stand? He arraigns the prisoner at the bar as not a man who is simply charged with crime, but as one who is a felon of the deepest dye, for whom there is no adequate punishment this side of perdition; a man whom, he said, he would prove to be the party that was the mainspring, the main thought, and the guider of this infamous crime. He held him up to public abhorrence at a time when, according to my conceptions of the duty of a prosecuting officer, his mouth should have been sealed as to all oratorical flourishes. He calls upon you to behold the one who is a spectacle to be gazed at; as a man whose heart is black beyond expression; who, if he were a demon sprung from hell itself, could not be painted in more hideous colors. He represents him to you as being not only the "main thought" of this crime, but also the coward who put other people's hands to do the dangerous work, while he secured his own ignominious safety by flight; as he who was here on that occasion, who called out the fatal time three times in front of the theater; who dispatched his emissaries, desperadoes, equal in wickedness with himself, but not having the same "managing mind," to do their cruel work upon the head of this Government, which should shroud this whole nation in mourning. He depicts him as taking his flight, and tells you, gentlemen, that he will trace him from "station to station;" "from place to place," from "nation to nation," in that flight; he will show you he was the man who "bought the disguises in which he was to escape on the very night of this affair;" he will follow him from here to Canada, leaving on his road traces of his flight which could not

be mistaken; he will prove the length of time he was in Canada; and will follow him in his flight, further, across the water to the Old Country, in England, in France, in Italy, with the shuddering thought ever with him that the avenger of blood was on his track. He said he would follow him into the Papal service, and show at least how the "friend of his youth, moved by honorable considerations," the desire to have a felon of such a caste brought to justice, excited by those lofty inspirations which would make a man sacrifice his own brother, informed on him, and he was at last brought in chains to this bar to be judged by you. This was the opening of my learned friend, and I hold him to it.

What is the condition of the case now? Has the learned gentleman kept his pledge? I propose to show you, before taking my seat, that his pledge is not kept. Let him settle with his own conscience the responsibility of the course he has chosen. Nor do I propose, in the discussion of this matter, to enter into any debate, or indulge in any invective; but I have a simple duty to discharge; I shall endeavor to do it, I hope fearlessly, and with such degree of intelligence as will enable me to present this matter to you for your consideration preparatory to the introduction of all the evidence for the defendant. I have no further reproaches to cast upon the other side. If the evidence reproaches them, the fault is with them, not with me.

Gentlemen, heinous as this offense is, its moral qualities in the sight of the Almighty are no worse than when the commonest vagabond in the street is slain in cold blood. I am well aware of the distinction that is drawn in Holy Writ between the head of a nation and a private individual, but in the sight of the Judge of the quick and dead, the life of the humblest man is as precious and sacred to Him as the life of the loftiest citizen. I am aware, also, that this crime struck at the very heart's core of this people. I need not recall to your minds, you citizens of the city of Washington, the shock, the thrill of horror which went through the community when, on the morning of Saturday, the 15th of April,

this event was announced. You know as well as I do, that men's hearts stood still for fear, lest there should be such an outburst of indignation and wrath through this land that men would be swept away from all the bounds of reason. You know how people sprang to their feet to seek out the offenders who had outraged their most profound and sacred feelings. You know that old men prayed for vengeance, and that the minister of God in the pulpit invoked the judgments of Heaven upon the assassins. Yea, even tender women became changed in their natures, and longed to have the offenders brought to speedy and condign punishment. Nay, more; not only tender women, but people who should have had the attributes of tender women, shrieked for bloody vengeance upon this prisoner and thousands of others, in mad disregard of evidence against them. You know as well as I do how all these fierce passions spread through this broad land swift as lightning, until with one mighty cry its people gave themselves up to that madness which can only be sated in blood, either of the innocent or the guilty. You know what exertions were made to secure the arrest of the offenders; no step was left untried, no means unapplied, no money spared in the effort to secure the arrest of the guilty parties; and the heart of every good American citizen could not help approving from its inmost depths. Who among you would have failed to render justice to either of the persons concerned in the crime? Does the Government fear that a jury of the District of Columbia would fail to render back for punishment any man who could be lawfully arrested, tried, and proven to be guilty? We have no such fear: and we have no alarm for the prisoner on that score, inasmuch as, of all men now living, we have the best opportunities of knowing his innocence, and the best right to bear testimony thereto.

There are in this, as in every case, certain prominent features, which it is important for you, gentlemen, to keep in mind. There is a difference between us and the learned counsel on the other side with reference to the character of this indictment; but with questions of law I do not propose

to perplex your minds at present. I will simply state, they contend there was a conspiracy to murder the President of the United States and certain members of his Cabinet; that that object was accomplished, and the prisoner at the bar was one of those conspirators, with John Wilkes Booth and others. On the other hand, we maintain this is an indictment for murder simply, and upon that issue, as we have been divided in opinion, his honor has at least allowed them the privilege, under their view of the case, of introducing a great deal of evidence which we understand is applicable to a correct legal view of the indictment. I propose, then, to take up the case in their view, for the sake of simplicity, and to treat it as a conspiracy to murder, its design accomplished, and this defendant charged as one of the conspirators. If he was one of such a conspiracy, he is as much guilty as the man who struck the fatal blow, provided he aided and abetted therein. We are, therefore, obliged to inquire into the question of who the conspirators were? There is no doubt that John Wilkes Booth was one of them, and Lewis Payne was another; as to Atzerodt and Herold, there may be some doubt; as to Mrs. Surratt, we hope to satisfy you that a grave error has been made in her case. As to the prisoner at the bar, we take issue with them openly here before you, and declare him to be innocent of that offense.

Now, gentlemen, what are the circumstances upon which they rely to show this conspiracy? The learned gentleman who leads and directs this prosecution, who is the head and mind of it, if his colleague will pardon me, the expression, announced to you that he would trace back this conspiracy to 1863. So far as any evidence has gone, he has not fulfilled his promise to you and the court, except it be that you grope outside of this case to seek for suppositions and beliefs and apprehensions and suspicions that some such thing existed before 1864. So far as my memory now serves me, the witness who takes us further back is one John Tippitt, of whom we shall have something to say, the mail-carrier through Surrattsville. When did the conspiracy begin, is a point for you

to inquire. They say the parties above named were all concerned in it. When did Surratt's introduction to Booth take place? In January, 1865, according to Mr. Weichmann, on Seventh street. So then, gentlemen, I maintain, that for the purpose of this case, you are not at liberty to go behind January, 1865, because Wilkes Booth, who originated this affair, the man whom you must believe from their own evidence was the person who planned and schemed it all, only made the acquaintance of the prisoner at the bar in January, 1865; and under what circumstances? The prisoner at the bar, even now only twenty-three years of age, left his college in 1863 or the early part of 1864, a youth just starting out into life, having no knowledge and experience of the world, leaving behind him at the college such a reputation as any young man might envy, coming to the city of Washington and losing his father, is thrown by that event into the position of husband for his mother and father for his sister. There were but three of them, for Isaac, his elder brother, was away in Mexico or Texas, and had been for years. He acts as friend of his mother, as her son, as her counsellor, her man of business. They moved to the city of Washington and took a house on H street, leaving what little property they have still in the State of Maryland. There were rents to be collected and the farm to be looked after; and he was to be the man who was to be her *factotum*. In any of the manifold relations of life, no witness has ever impugned him; no witness has ever intimated to you that he was otherwise than a faithful son; that he was not diligent in looking after his mother's interests; that he was not her protector, her friend, her companion, at all times, until suspicion is cast upon him by the witness before that tribunal which cruelly put his mother to death, and those here produced, that something went wrong with him after he made the acquaintance of John Wilkes Booth.

Who was John Wilkes Booth? One whose name and reputation will go down to the latest times associated with the most atrocious assassination that was ever committed. Let

us hope that at the bar of that offended God to whom he has gone there will be found some mitigation of his offense. Let us hope that at least his mind was unhinged from its reason, and that he had become in the strictest sense such a fanatic as not to appreciate the enormity of the act which he contemplated and committed. But, until, it was committed, Booth was of polished exterior, of pleasing address, highly prepossessing in appearance and manners, received into the most accomplished circles of society; his company was sought after; in conversation he was exceedingly agreeable; his disposition was bold, courteous, considerate and generous to a fault; and a warm and liberal-hearted friend. Professionally he had attained a reputation upon the stage that was second to none of his age in this or any other country. He meets the prisoner, of all persons perhaps the most susceptible to the influences of such a man, and he was, of all men whom he could meet, the one most likely to ingratiate himself with him. The very reputation of the man, his distinction as a public actor, was enough to draw the heart of the accused towards him. In evidence of it, we find him visiting at the house; we find them frequently together, complimentary tickets sent to go to the theater and accepted; his society freely enjoyed; and these relations existing, from time to time, up to within a month or five weeks before the sad event occurred which has brought you together. There was nothing, surely, in this association calculated to be any reproach to the prisoner at the bar, except from subsequent events; and for those subsequent events the prosecution rely chiefly upon the testimony of Louis J. Weichmann and John M. Lloyd. As we propose to introduce countervailing testimony as to those two witnesses, I will direct your attention to some points upon which we shall contradict them—material points in this case.

Mr. John M. Lloyd is an avowed drunkard, and so intoxicated on the evening of the 14th of April as not to know whether he fell down at the feet of Mrs. Surratt or stood up like a man to converse with her—so as not to know whether

he grovelled like a beast or retained the attributes of manhood. Mr. Lloyd tells you that on the 11th of April—Tuesday preceding the Friday of the murder—he met Mrs. Surratt on the road and had a conversation with her about some property. She was then on her way down to his house on business connected with her property. He tells you that on the fatal Friday, after he had been at the courthouse in Marlboro and indulged himself in drinking to excess, he returned and found her at the house. I shall not rehearse to you his testimony, because that is the business of the gentlemen who sum up; but he testified as to a certain package which was left at that house by Mrs. Surratt, left for him, the contents of which package, when he subsequently opened it, he described to you. Mr. Lloyd has no recollection that Mrs. Offutt was in the house, a witness summoned by the Government, but not, after his testimony, put upon the stand. He has no recollection of what transpired in the house. He does not recollect what did take place there, and which we shall show you: that when Mrs. Surratt arrived there with Louis J. Weichmann, she alighted from the carriage, was received into the house by Mrs. Offutt, and told Mrs. Offutt the object of her visit to that place, and handed her at the same time, as any one else would unsuspectingly deliver, a package which she had been requested by a friend as an accommodation to deliver at a certain place, handed her openly and casually a package to be given to Mr. Lloyd; for we do not shrink from the full issue of this case. Mrs. Offutt will tell you what transpired at that interview with reference to this letter to which Weichmann has testified. She will tell you who else was in the room with these parties. She will tell you that Mrs. Surratt met Mr. Lloyd, and what Mr. Lloyd's condition was, if it were necessary after his own statement upon the stand. She will tell you about how long Mrs. Surratt was there, and what transpired as the parties went around to the front door of the house and drove away. You will be able to see through the whole of it, that her testimony is entirely

consistent with the theory of the entire innocence of Mrs. Surratt of any complicity in this affair.

Bear in mind, gentlemen, in the investigation of this case, that there is a principle of law running through it, from beginning to end, by which you will test all the evidence that they produce, and up to which standard they must come before you can convict. They must not only prove to your satisfaction a reasonable probability that the prisoner is guilty of the charge; but, more than that, they must prove to your satisfaction that you cannot account for the evidence upon any other reasonable theory than that of guilt.

I should here state to you that Mrs. Surratt's circumstances at that time were very much straightened, a fact which will appear in evidence, and that her object in going to this place was to obtain money to provide for the necessary expenses of her family and meet payments due by her husband's estate.

I will show you moreover, that Mr. John M. Lloyd, on the morning after the assassination, denied all knowledge of the parties to the offense, Booth and Herold, who had made their flight directly through Surrattsville. He conversed with them; he tells you that himself; but on the morning after the murder, when conjured by every consideration which ought to influence him to tell the truth about it, being approached by an old friend who had known him for years, he called God to witness that he knew nothing of these men. What his inducement was, whether it was fear of his own complicity, or what other considerations influenced him, are not proper subjects of inquiry at present.

The next witness in this connection is Mr. Louis J. Weichmann, a clerk in the War Department; a quondam student of divinity; a gentleman who stood in the relation almost of a son to that martyred mother; a man who lived in her house, enjoyed all the hospitalities and the close relations which are permitted to a person on such familiar terms with the inmates. Mr. Louis J. Weichmann, the principal witness for

the Government on that other trial, the man whose dastard heart, being terrified by the position in which he found himself, was ready to sacrifice the innocent—what does he tell you upon the subject? He says he was with Mrs. Surratt on the 11th of April, that they met Mr. Lloyd, and Mrs. Surratt whispered to Mr. Lloyd; they had a whispered conversation; she leaned forward out of the buggy, and she and Mr. Lloyd whispered together. Mr. Lloyd has contradicted him on that subject. We shall contradict him by two other witnesses present at that interview. It was a suspicious circumstance, if it were true, connected with the events immediately preceding this tragedy, and introduced for that purpose by the learned counsel. As you well recollect, when he asked for the manner in which this was done, as he did with various other witnesses, it turned out that the conversation was in a natural tone of voice; there was no whispering between the parties. What next? He tells you that on the 14th of April he took Mrs. Surratt down to Surrattsville. He does not recollect seeing Mrs. Offutt there, nor Mr. Jenkins, nor anybody else but Mrs. Surratt and Mr. Lloyd. He did not even see the package delivered; but he tells you that “before we left Washington she was about to get into the buggy and she handed me a package, which she told me she was afraid would get wet, as it was of glass.” Observe, he is a man who is a stranger to all these circumstances, an innocent party. He tells you that sitting at the tea-table the night of the assassination he heard the steps of a man coming up the outer stairs to the front door; the bell rang, and Mrs. Surratt went to the door. We shall prove to you that this is a distinct and positive falsehood; that Mrs. Surratt did not leave that table; she did not answer that bell; she did not, as he states, go up and answer the bell, and introduce a man into the parlor, where a conversation took place between them there, and where she remained until they came up from tea, when the man had gone. We will put upon the stand, if necessary, the person who answered that bell. We will show to you that that person who came to the door that

night was not one of these conspirators, nor is he suspected of being such, but a respectable citizen; that he was introduced into the parlor, and his errand was of the most friendly and proper character. The inuendo was that the person who came up the steps was Wilkes Booth, or Atzerodt, or Herold, or Payne, and that Mrs. Surratt sat at the tea-table, with an expectant ear, waiting for the man whom Weichmann says she had told him on the road she was to see that night. That is the use they make of it. We shall prove to you further the exclamation with which he charges Mrs. Surratt when the officers came to the house early in the morning was not uttered; and that the conversation in the parlor, which took place after the detective officers left that night, in the presence of three or four ladies, exists only in the fiction of Weichmann's tongue. The parties were there together, but no such conversation ever took place, no such statement was ever made by Mrs. Surratt by way of consolation to her daughter, that she believed John Wilkes Booth was an instrument in the hand of God for the punishment of Abraham Lincoln; and that God had sent this as a visitation upon this people for their pride and licentiousness. We shall contradict him not by one witness, but by several on that point. We shall further prove that when he said on the morning of the 15th of April, when they sat at breakfast, he announced his purpose to disclose what he knew of this affair, and left the table for this purpose; and Anna Surratt remarked at that table, "Abe Lincoln is no better than a nigger in the army," he tells what is utterly false. We shall show you the persons who were present at that breakfast table, and the man who called for him and accompanied him out of the house down to the headquarters of the police; and, further, that his whole account of that affair was a wicked lie. All lies are wicked; but this is one which struck at the lives of his fellow creatures, and brings disgrace, ignominy, and such suffering and sorrow as the world has rarely seen upon the people sitting at that table, upon that innocent young woman, whose heart was wrapped up in her mother, and was of all

lies the most wicked. We shall show you what transpired at the station-house, and leave you to judge whether the certificate which has been produced here, that he was a special detective detailed by the War Department to assist in the search, was intended for more, and was not known by this man to be nothing but a card for his transportation in that pursuit; and that he knew all the time, in his inmost heart, although the irons were not riveted on his feet or the manacles on his hands, that the hand of the law was on him, and he could not depart. We shall show to you he did not return to Mrs. Surratt's that night because he was not allowed to do so. We shall show to you the officers of justice never lost sight of him, and he never was finally discharged until after he had rendered his account to the military commission. As they returned from the station-house back towards the house, a certain gentleman who was with him will detail to you a most remarkable declaration made to him by this man Weichmann; he will describe the trepidation which he manifested at the time. We shall show to you there was occasion for this trepidation and this declaration. A man, who out of his own mouth, if in no other way, is known to have been in the habit of visiting these parties, of being on familiar terms with Atzerodt, lending him his hat, lending him his coat, being seen with him on the street—a man who went to see Booth several times, even on the very day of the assassination called upon him to borrow from him the use of a horse and carriage—had occasion to feel himself bound up with these parties. Further, independent of his being at that house, as a clerk in the War Department he obtained information which he furnished persons who ran the blockade, in order to inform the South with reference to the number of prisoners in the hands of the Government. Gentlemen, I know nothing of this matter; but there is a theory which to me is consistent with the innocence of all these parties, to which I do not allude now solely from reasons of prudence; but there is a theory, to which your attention will be directed at the proper time, which will enable you to see that all these

circumstances may exist, and yet, at the same time, there be entire freedom from complicity with any design upon the life of the President or any other living being on the part of Mrs. Surratt or her son.

These are the principal witnesses as to the conspiracy. I think you will agree with me upon that point. The conspiracy being established, according to their view, the next step they take is the natural one of bringing Surratt here on the night of the assassination and the day preceding, because the gentlemen are well acquainted with the rule of law, that unless he was here, aiding and abetting in that offense, in some way affording aid to the parties engaged in it, or where he could furnish them aid if necessary, acting for the purpose of carrying out their common design, he cannot be convicted of the offense with which he is charged. They are well aware of that rule, and therefore they find it necessary to prove what does not exist in reality, namely, John H. Surratt was here on the 14th of April, 1865, and on the night of the 14th, at the hour of the assassination. If he were in Europe at that time it will not be contended for a moment he could be guilty of this offense. If he were in Buffalo, and not acting in concert with them, it could not be pretended for a moment that he was guilty. He must have been near enough, if need arose, for his services to be called on to carry out the scheme.

To establish his presence here, whom do they produce? They produce first, in the early part of the case, Mr. Joseph M. Dye, an utter stranger to us, for the purpose of establishing perhaps the most material fact in the case. He was subjected to a long examination, and when dismissed after his cross-examination, disappeared like one of those phantoms which he saw in his dreams. Mr. Sergeant Dye described to you a tall man, and a genteel man, and a villainous man, whom he saw in front of the theater that night. Assuming that Mr. Sergeant Dye was there, sitting on the platform and watching these men, and he saw suspicious circumstances about these three men whom he described, we will entirely

destroy his testimony by producing to you the tall man, and we will show you the genteel young man, and we will show you further the villainous man. We will show to you further the man who went out and looked into the back of that coach. They say the tall man was the prisoner at the bar. You will see how much like him he looks. We will show to you he did not sit upon that platform, as he says he did. We will take a step further, and produce the man who called the time, "ten minutes past ten," in an audible tone of voice, in front of that theater. Will you have any difficulty with that witness? If you still have, we can show to you the record of his indictment for passing counterfeit money, for which he was arraigned after he left this stand, and for some purpose that case was procured to be continued. We shall further, if necessary, produce to you witnesses from his own native town, who would not believe him upon his oath. We will do more, we will follow him up to H street that night, and introduce to you a person who was adjoining that house on the front stoop from half-past nine to eleven o'clock, wide awake, who will tell you not a soul passed Mrs. Surratt's house during that period, and no such conversation as he states took place with anybody at an open window in that house. Nay, more, we shall demonstrate to you by the records of the Smithsonian Institution, or by some record of equally scientific and reliable character, the condition of the moon at that time was such that it was impossible for any man to see what Dye says he saw on H street at that hour; and, in corroboration of this truth, the person who was near by says it was so dark at the distance of forty feet he could not tell whether a man was white or black.

Who else do they produce? David C. Reed, a notorious gambler for twenty years. If allowed, we shall contradict him out of his own mouth with reference to seeing Surratt. I shall produce to you the record of his indictment in this court for a penitentiary offense yet to be answered. We shall prove to you by respectable citizens in the city of Wash-

ington, men whom you know, and will believe as against him or any man, that he is unworthy of belief upon oath.

Who is the next man? Robert H. Cooper, Sergeant Cooper or Corporal Cooper, who was with Dye. I think it only necessary, with reference to Mr. Cooper, to state that his testimony is so indistinct with regard to Mr. Surratt it is unnecessary for us to pursue the inquiry any further in that direction; and, if he saw those men on the front pavement, a suspicious circumstance according to his notion, he will be contradicted by the parties themselves and by the person who says no such conversation took place with anybody at Mrs. Surratt's house on H street, and by the actual condition of the moon.

Who is the next man? John Lee. We shall contradict Mr. John Lee out of his own mouth, by showing he has stated to more than one person in this city he never saw John Surratt and did not know him; moreover, when he was in hot pursuit of the offenders, as a detective of the Government, down in the lower counties of Maryland, he on two occasions stated he did not know John Surratt, but he did know Atzerodt, and thought he would recognize Atzerodt if he saw him again, but he never saw John Surratt; and on the very day before he took his stand in the witness-box he made a similar declaration in this city to one of the very men to whom he says he narrated all he knew about this case.

You observe, gentlemen, I mention no names of witnesses on our part. I avoid doing so for politic reasons. But we have not done with Mr. John Lee. We will prove to you that the reputation which he has established for himself here in Washington among his associates, at the time he was acting for the Government, was so bad that he is not entitled to any credit upon his oath.

Who next? William E. Cleaver, just fresh from the jail, admitted to bail since you have been sworn in this case, committed there originally for murder by the most foul and cruel means that could be applied, and that, too, upon the person of a young and tender girl; such a crime as man-

hood would blush to mention in such a presence as this. He has had his trial. We can show to you he has had his conviction. We shall also show you that he had his motion for a new trial. We can show you that the motion was granted, and he was admitted to bail; but he is still to answer the charge of manslaughter. Mr. William E. Cleaver was so delicate about his honor, that he did not like to tell you where he had been for some time past; it finally turns out he is the friend and companion of that most infamous of men, Sanford Conover, alias Dunham; manipulated by him in jail, brought out for conference with certain dignitaries; taught his lesson what he was to swear; is produced, reeking with corruption, to testify that he saw John Surratt on the 14th of April, and gives other damaging testimony in the case, if he is to be believed. Mr. William E. Cleaver, we shall show to you, has stated that he never would be brought to trial again, because there was a strong arm stretched over him for his protection. He testifies without inducement! Mr. William E. Cleaver further states to another man that in all human probability he never will be tried again. It is a little modification of the other statement. Mr. William E. Cleaver, we shall prove to you by a host of witnesses taken from this community, is not to be believed upon his oath.

Who is the next? He is a fitting creature to be a successor to William E. Cleaver—Benjamin W. Vanderpoel, a gentleman anointed by the leading counsel for the Government, in his introduction, as a member of an old and distinguished family in the State of New York, and a member of the New York bar. Heaven save the mark, if he is a fair representative of the New York bar! He comes here, he says, a volunteer witness, to testify against Surratt. He recognizes him immediately, has a free conference with the learned and distinguished gentleman who leads this case on the other side, and swears positively that he saw John H. Surratt on the 14th of April at a certain concert saloon, which you all know, without proof, is Metropolitan Hall, on the south side of Pennsylvania avenue, between 11th and 12th streets—the

only concert-room in that locality, for there is none between 10th and 11th, and never was; that he knew Booth well, and in there he saw Booth and four others sitting at a round table; that there was a woman dancing; next to Booth was sitting a man who is the prisoner at the bar. He is sure of it. He identifies him distinctly and positively. He is very flippant about it. He is exceedingly confident about it. We shall prove to you that Mr. Vanderpoel has stated in the city of Washington and elsewhere, he never knew Surratt, nor saw him that he knew of. We shall prove to you that, although he asserted he came here without any summons from the Government, spontaneously, from those influences which excite the heart of a good citizen to assist the Government in punishing the guilty, he received a telegram from this gentleman (pointing to Mr. Carrington) in the city of New York, calling him here; and the gentleman did not contradict him when he was on the stand. We shall show to you that, so far from being a partner, as he asserts, of Chauncey Schaffer, a gentleman of the highest character and reputation, he was simply allowed, after having before that been turned out of his office, to keep his desk in his office; and he was forthwith turned away from that office after he had delivered this testimony, because that distinguished gentleman knew of this telegram. We shall prove to you, if they will allow us, that Mr. Chauncey Schaffer, with the honor becoming a gentleman of character, addressed duplicate communications to the officers of the Government of the United States and to the counsel for the prisoner stating these facts, and yet they would not furnish such a statement to this jury. We shall show to you that Mr. Benjamin W. Vanderpoel is utterly infamous, if we need any other proof than this. We shall show to you—pardon me if I repeat the expression so often, it is because of the necessity of the case—that there never was a round table in that establishment at Metropolitan Hall, and there never was any entertainment there on Friday afternoon, the 14th of April, and on only two or three occasions, since that establishment has been in operation,

have they had any entertainment on Friday afternoon. He tells you he was there between one and three o'clock. Do you wonder, gentlemen, that we have been at times betrayed into indignation and over-zeal, perhaps, in the eyes of those who were not acquainted with the facts resting in our knowledge? I think we will need no apology upon that subject after the facts are presented to you.

The next witness is a woman who, under the present existing state of things in this country, has been rescued from a condition of degradation and exalted to the highest position; but, as she is to be recalled, I shall pass her at present, only calling your attention to her name because she comes in this list; but you will have no trouble with her testimony.

There the Government stopped its proof of actual and constructive presence for a week or ten days, or two weeks—I do not know how long—and would not allow us to recall these witnesses. His Honor would have extended us that privilege, but the Government interposed its objection to our having these witnesses recalled for the purpose of cross-examination, to lay the foundation for contradiction. Witnesses were produced from the witness-room, put upon the stand, interrogated, and dismissed before we could have an opportunity to inspect their histories—without a knowledge of their names, for the gentlemen would not furnish them to us, although often appealed to to do so. These witnesses they relied upon to establish that point of the case. What has followed within the last two or three days? They saw plainly that our character for sincerity in this subject was pledged to the destruction of one or more of these people; and lest, when they came to sum up this case, it should appear that their testimony was demolished, they set out to fortify it, and brought in some more witnesses on the same subject. The first of them is Charles H. M. Wood, the barber. There is a certain investigation proceeding, which will make it evident to you, I think, not that Wood has knowingly sworn falsely—I am very far from charging it upon him—but that he is clearly mistaken; and, in the nature of things, the same per-

son could not have been in two different places at the same time, and therefore he is wrong. This prisoner was not at his barber-saloon with John Wilkes Booth and his party at the time he mentioned. I pass him, because that matter will be fully reviewed before you; but his own testimony was candid in this, that he says he never saw either of those parties before, except John Wilkes Booth; and, after the lapse of two years and more, he sees a man whom he thinks he shaved that morning, is quite sure of it, and mark, he says, "I gave him a clean shave."

The next is Mr. Charles Ramsell, from Massachusetts, brought all the way here to prove what? That on the morning of the 15th, having been in town over-night with a comrade, he was going out to his camp, and about two miles out of town he saw a horse hitched. You recollect he described afterwards how a man came riding up behind him on the same horse, and inquired the way through the pickets, and whether there would be difficulty in passing them, and his reply. Then he recollects, also, that there was a courier seen coming from Washington, and the man, as soon as he saw the courier, cut off rapidly across the fields, saying he would try it anyhow. He talked with the man on horseback. The prisoner was requested to rise; not to face the witness, but to show his back, and the witness says, "I think I have seen that back before on that horse."

Frank M. Heaton, a clerk in the Land Office, and I do not doubt a very highly respectable gentleman, saw no face that night, when he was out in front of the theater, that attracted his attention; but there was a crowd there waiting to see the President, and last Thursday-week he came into this court-room and thought he saw a distinct resemblance between the prisoner at the bar and a face which he saw before Ford's Theater that night. Whom would you hang upon that testimony?

The next is Theodore Benjamin Rhodes, itinerant clock-maker, etc., jack of all trades. Mr. Rhodes tells you he visited that theater on the 14th of April about mid-day. We shall

show to you the front door during the day was always kept locked at that theater, and it was locked on that day, and nobody was ever allowed to go in. We shall show you that from eleven o'clock to two or twelve to two the company there engaged were occupied in rehearsal, and if this man had been in the theater or in that private box he would have been seen by them. The Government has shown you the stick which was used to bar the door. Rhodes describes it as broader in the middle and beveled down to the ends, and whittled down by Surratt, as he says. That stick is not the stick which was put up at that place, for the Government itself has produced the bar. We shall show you further that he was not in that box with the men who arranged it, because we shall put those men on the stand here to testify to it. Nay, more, you will recollect that out of his own mouth he is condemned, when he tells you that he sat in the front row of that dress-circle, and located the box in which the lamented President sat on that fatal night on the left-hand side as he faced the stage; and it is on the right-hand side. He did not learn his lesson well. There is another point. He tells you that while he was standing there looking at the theater there was a person—somebody—he heard in the private box, who opened the door about six inches, then closed it and went out, and he, thinking that he would like to look in there too—he has an inquiring mind—he walked around there, got into the box, and then he heard a person coming in there whom he supposed was the same person that had gone out; that he turned around and the man addressed some remarks to him—I will not trouble you with the details—and he found it was the prisoner at the bar, with the stick in his hand! Gentlemen, we shall prove to you by the diagram of the theater that, in order for a man to have gone out of that box—mark it well, for these are things that do not lie—he must have come out precisely the same way in which Mr. Rhodes walked in. There is no back staircase from that box. There was but one door that could be opened. That door leads into a little narrow passage

not much wider than is sufficient to allow a person conveniently to walk through, runs into the box, and ends with a blind wall at the end of it. How could he have gone out to get this bar without the man meeting him? We shall show you the only way of getting up into that box is to walk down from the parquette and up around behind the dress-circle, through the little door and passageway, and then into the box. We want Mr. Rhodes to be recalled. We do not know whether we shall get him or not.

I think, gentlemen, we have done with all the men and all the women who have testified to John Surratt being here on that day. If he was not here, I appeal to the gentlemen on the other side to know if there is anything else in this case, any other testimony, that can affect him with guilt in this transaction.

Where was he? We shall show you in the course of time. Now, gentlemen, comes in our part of the case, what we shall prove to you. I have stated to you our conviction of this man's innocence. Pardon me while I briefly recite to you some of the reasons for that conviction.

John H. Surratt was in Canada in April, 1865, and from there he went to Europe, and after an absence of nearly two years he is found in the Papal service. He, a man who is said to have received from the Confederate government the sum of \$100,000, is so driven by poverty as to take service as a common soldier in the ranks of his holiness the Pope. At that place he is discovered by a man, and charged with complicity in this affair, and he is followed to Egypt; he is brought in irons to this country, and, at the end of nearly two years, is lodged in the common jail of this county. He is there seen and talked with by the counsel in this case for the defense, not allowed to have any communication with the outside world except through his counsel and his sorrowing sister. He there from time to time narrates his story as we are able to get it from his own lips, a tale simple in itself, and which has been faithfully and perseveringly followed from that time to this. It is the chart by

which his whole defense has been shaped and directed, and as one of those interested in having these developments made, let me say to you that never has it been my fortune to find a more simple tale so corroborated by facts over which he could have no control. Witnesses have been found to transactions which he supposed it would be impossible for us to verify, men of position and of standing in their own communities, whom you cannot doubt, who come for the single purpose of narrating, each one, the individual facts which he recollects. We will take him from some time in the month of March, 1865, down to the city of Richmond. We will bring him back from the city of Richmond to the city of Washington on the third of April. Lloyd and other witnesses say he passed through Surrattsville on that day, and arrived here in Washington on the night of the third of April. He went to his mother's house, as even Weichmann testifies. From there he went down to Pennsylvania avenue, and took lodgings at the Metropolitan Hotel, or some other hotel on the avenue, and went thence by the cars north on the morning of the fourth of April. He went direct to Montreal. He landed there and registered himself at the St. Lawrence Hall, according to their own proof, a conceded point on both sides, on the sixth of April. He settled his bill there on the twelfth of April. That is conceded on all hands. There is no doubt about that. He went off on a certain mission. Here they tell us that he went in response to a telegram or letter received from J. Wilkes Booth summoning him to Washington. They put McMillan on the stand to prove it. We shall show you he did not come near the city of Washington, and was not within about four hundred miles of it at any time until he was brought here in the Swatara. We shall show you further, that instead of making these trips from Richmond to Washington, and Washington to Montreal, and Montreal to Washington again, and to Richmond, weaving his web as a spider would, as my distinguished friend described him, he never was in Richmond but twice in his life—once on

an innocent visit, and the second time on the occasion to which I have referred. Can you complain of us for feeling outraged at such representations?

We will show you where he went, who sent him, for what purpose he went, where he was on the 13th April, on the night of the 13th of April, on the 14th of April, on the night of the 14th of April, on the 15th of April, and on the 16th of April, and so on back to the city of Montreal; and I pledge myself to show you that he was not within nearly four hundred miles of the city of Washington on any of those days; and he had, so far as we can ascertain, no communication with any parties who are charged with this offense. We will show to you, gentlemen, that he went to a certain town, there registered his name in his usual way, "John Harrison," as he did at Montreal, his first and middle name, leaving off the Surratt; that he remained there in discharge of a commission with which he was intrusted on the 14th of April and the night of the 14th, and on the morning of the 15th, for the first time, heard of this tragedy; that he left that place and went to an adjacent town on Saturday, the 15th, in the afternoon or evening; arrived there at night and remained until Sunday afternoon. I stated to you he registered in his own name. I tell you now that the register of that hotel where he originally put up has most mysteriously disappeared, and cannot be found; even the proprietors and servants of the hotel are scattered in every direction; but we will show you certain telling facts connected with his stay in that town which indelibly fix him at that point at that time, by witnesses outside of the hotel, gentlemen of character. When he went to this adjacent town he stopped at a place which is on one of the great arteries of travel in this country, through which thousands of persons continually passed, and in direct communication with the city of Washington by telegraph. At that point I find his name registered in the same characters in which it was at Montreal. We shall show you when he left, and fol-

low him back to the city of Montreal, where he arrived on the 18th of April.

Nay, more, gentlemen, they shall not be able to tell us that he might have been concerned in this affair and then have fled, taken the cars, and gone to this place for the purpose of making up his defense. We will prove certain facts and circumstances which rendered it physically impossible for him to do it. We shall show also that he could not take a carriage and drive to Baltimore, and then drive out of Baltimore across the country to tap the train between Baltimore and Harrisburg. And we will establish by proof, moreover, such an interruption in railroad travel as to preclude all possibility of his reaching these points, both interruptions from the elements and from the authorities to prevent the escape of any of the desperadoes concerned in the assassination.

After his arrival at the city of Montreal, it is not material to the purposes of this case what became of him; but in justice to him let me say, that while lying concealed in the city of Montreal and elsewhere, he was allowed no communication with any newspapers or any outside intelligence, and heard no report except that the trial here was progressing favorably in behalf of his mother, and he was driven frantic by grief when at last, on the eve of her execution, he discovered she was convicted and doomed to be immediately executed. By friendly force alone he was restrained from returning at once to the city of Washington to surrender himself; an act which could have ended only in his own destruction, without benefit to his mother. Let no man who knows this history dare charge him with cowardice. Flight, say the gentlemen, is an evidence of guilt. Who would not fly on such an occasion as that? Who would not have been disposed to fly, if he had known John W. Booth, or been with him at all? The first intimation he had of his being charged with complicity in this affair was in the city of Albany, when he read it in a newspaper, and at once went to Canada from that point; not because he was

a fugitive from justice; for you all know, as I do, that justice dropped her scales when called into that building at the other end of Four-and-half street. Such was the height of public excitement, such the agitation of this country, such the grief and desire for vengeance, that no man stood safe upon whose skirts rested the most remote suspicion of any connection with the parties engaged in that terrible crime.

I have said to you, gentlemen, that it was not necessary to follow him beyond Montreal. It may be for some purposes. We shall be able to produce upon this stand a credible witness who has seen and conversed freely with Dr. Mc-Millan upon this subject—whose memory is not at fault about it, inasmuch as his recollection was long ago reduced to writing—who will tell you that, in the material points which were addressed to that witness by my colleague (Mr. Merrick), he made statements directly the reverse of those to which he here testified.

We shall show to you that Mr. H. B. St. Marie, the man whom we dismissed, to their disappointment, without any cross-examination, is a person devoid of character and unworthy of belief; and, having thus disposed of those witnesses, we shall leave the matter, so far as the testimony is concerned, in your hands, with one or two exceptions.

I desire, gentlemen, before I conclude, to say a word or two with reference to other points. An effort has been made in this case, I fear very much for the honor of my country, to sacrifice justice and innocence for a purpose. An effort has been made here to cloud with fresh suspicion the escape of Surratt, as they call it, from this country to Canada, by certain testimony in regard to a handkerchief said to have been found at Burlington. We shall be able to show you that that handkerchief was not dropped by Surratt, but by another person, an emissary of the government in pursuit of Surratt, carrying this as one of the tokens by which he might recognize him—a person who knew him in youth—and that the government knows it was dropped in that way.

I do not charge these gentlemen with it. I speak of the government as the government, but certainly they ought to be able to satisfy you, their fellow citizens, and their consciences, whether they can escape the responsibility of that knowledge.

Permit me simply to recapitulate the main points of the case. The government must show to you that he is beyond all reasonable hypothesis guilty of the charge alleged against him. They must show you that he was one of a band of conspirators who sought and accomplished the death of the President; that he was aiding and abetting the commission of the crime in such a way as brings him into complicity with the tragedy itself; and, if we satisfy you that he was so far away from these parties as I have stated, and if he had no communication with them at that time, so far as can be ascertained by the diligence of the government or the solicitude of the defense, we shall confidently expect a verdict at your hands acquitting him from this charge. We are satisfied we are able to show you conclusive testimony in reference to the "Lon" letter, by which we can bring home to the Department of Military Justice knowledge that it was a forgery, committed to gratify private ends; but I am advised it would not be evidence, and therefore pass it without further comment.

In conclusion, I will state that perhaps the most pregnant fact of all, one which will be most satisfactory to the human mind, is in our possession. Independent of the declarations of Booth made in his diary exonerating Mrs. Surratt, and of the testimony of one of the other conspirators, Payne, exonerating Mrs. Surratt from all complicity, we shall produce to you testimony showing the contents of the articles of agreement between these men, by whom they were signed, and that Mrs. Surratt's name is not there nor John H. Surratt's name—testimony which comes to us directly from the mouth of the chief assassin immediately before the commission of the crime, but not discovered until too late. We shall prove the contents of the original arti-

cles of agreement, with the genuine signature of the parties attached to that paper, pledging them to the commission of the offense.* When we have done all this, gentlemen, we may safely ask you whether you believe the prisoner at the bar to be guilty or not guilty of the charge.

THE WITNESSES FOR THE DEFENSE AND IN REBUTTAL.

July 8.

The examination of the witnesses for the defense lasted from July 8th to July 24th; of those in rebuttal and sur-rebuttal from July 23rd to July 26th.

For the same reasons as in the case of the witnesses for the Prosecution, the testimony of these witnesses will not be repeated here.

July 27.

THE ARGUMENTS TO THE JURY.

Mr. Carrington^b opened the arguments for the prosecution, and was followed by *Mr. Merrick*^c for the defense.

* On July 16, John Mathews was called as a witness for the defense. He swore that he was an actor and a friend of Booth; that on the afternoon of July 14, of April 14, 1865, he met Booth riding on horseback on Pennsylvania avenue; that Booth handed him a paper and asked him to keep it for him, that he took it to his room; that he was in the theater when the shot was fired; that he rushed to his room, opened the paper which was in Booth's handwriting, read it and then burned it. Then Mr. Bradley informed the court that they wished to prove by this witness that the paper was an agreement signed by Booth, Payne, Atzerodt and Herold to kill President Lincoln. Judge Fisher refused to allow it, saying: "I cannot see that this paper, purporting to have been a written contract, signed, sealed, and delivered into the keeping and possession of a third party, is legal evidence to establish any fact except two. One is that there were two or three or four fools as well as knaves who signed that contract; and the other is that if there were any other parties who were engaged in the conspiracy to take the life of the President, they had more sense than those who signed the contract. That is all it shows; and there is nothing else under the wide world that it can go to prove."

^b *Post*, p. 320

^c *Post*, p. 333.

MR. BRADLEY, SR., FOR THE DEFENSE.

August 2.

Mr. Bradley. Gentlemen of the jury. This case is an exceedingly simple one, plain in its facts, not enlarged in its proportions; but a factitious importance has been given to it, for reasons which undoubtedly may be strong and prevailing with those who have given it this importance, but which have no weight in my mind. You are sworn to try a simple case of the murder of an individual. There is nothing beyond it. You are to look to the indictment for the subject-matter of your inquiry, and in that indictment you find nothing but a charge of felonious killing of an individual. Great surprise at this view has been expressed by the counsel on the other side, who have conducted this prosecution with an energy, skill, and I will add vindictiveness, which I have never seen equalled, and have never read of in any book since the days of Jeffries and Scroggs, unless it be in some prosecutions in Ireland. They have endeavored to enlarge the proportions of the case made in the indictment to something which shall not only stir up your prejudices and mislead your judgment and control your consciences; but something which shall attract the attention of the whole country—nay, of the civilized world. For what purposes, with what ends, this great mass of irrelevant matter has been introduced, it is for them to say and for you to judge.

I do not rise to discuss this case at length; it needs no discussion. It was closed, so far as the defense was concerned, when the prosecution proved by Sangster that the defendant left Montreal at half-past three o'clock on the 12th of April, and when they proved by McMillan that he was in Elmira on the 13th. The defense was then complete out of the mouths of their own witnesses. But when they added to it that most wonderful, clear, explicit statement of the principal actor in that drama, Wilkes Booth, that the conception of the assassination originated on the 13th and 14th of April, and was consummated on the same day, they took away from

themselves the right to assail the accused as they have done; they took away all excuse for this shameless and monstrous abuse of their position by calling him names—a man manacled at the bar.

This may be, and probably will be, the last time I shall ever address a Washington jury. For more than forty years I have gone in and out before you. I know you all—every man. You know me. And I say, that in the history of that period of time no man at this bar has ever dared to assail a prisoner as this prisoner has been. He would have been frowned down by the indignation of all honest men if he had done so; he would have been put out of the pale of respectable lawyers. Gentlemen, history sometimes teaches us, and teaches us powerfully, what we should do in order that men should respect us. Perhaps the greatest lawyer that England ever produced—the man who, more than any other, moulded and shaped and laid the foundations of the common law under which we live; whose writings are still the horn-book of the profession and the guide of the learned in it—Sir Edward Coke, when he was Attorney General of England, with all his learning, with his great erudition, with his desire to form and shape the common law, subjected himself to the censure, which, in the minds of all right-feeling men, will be cast upon the course of this prosecution. Let me read to you a lesson of history. You will find the life of that great man in the first volume of the “*Lives of the Chief Justices of England*,” by Lord Campbell. At page 252 you will find this passage, and I commend it to the careful consideration of the counsel engaged in prosecuting this defendant:

“But he (Lord Coke) incurred never-dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court.”

He, the light of the profession, whose intellect was almost immeasurable, the grasp of whose knowledge has never yet been reached; he, the very light of the profession, “incurred

never-dying disgrace by the manner in which he insulted his victims when they were placed at the bar of a criminal court."

"The first revolting instance of this propensity was on the trial of Robert Earl of Essex, before the Lord High Steward and Court of Peers for the insurrection in the city, with the view to get possession of the Queen's person, and to rid her of evil counselors. The offense no doubt amounted, in point of law, to treason."

That is what is said here. Although our Constitution defines what treason is, we have a new article grafted upon the Constitution to suit the purposes of this case.

"The offense amounted, no doubt, in point of law, to treason; but the young and chivalrous culprit really felt loyalty and affection for his aged mistress; and without the most distant notion of pretending to the crown only wished to bring about a change of administration in the fashion still followed in continental States. Yet, after Yelverton, the Queen's ancient sergeant had opened the case at full length and with becoming moderation, Coke, the attorney-general, immediately followed him, giving a most inflamed and exaggerated statement of the facts, and thus concluding: 'But now, in God's most just judgment, he of his earldom shall be Robert the Last, that of the kingdom thought to be Robert the First.'"

"This," says the author, on page 253, "was a humiliating day for our order." It was a humiliating day for that glorious profession of which this man was an ornament, and of which I am an humble member. And this exhibition on this trial has been a most humiliating day, degrading to the profession, and disgraceful to the authors of it.

Again, on page 257:

"His first appearance as public prosecutor in the new reign was on the trial, before a special commission at Winchester, of Sir Walter Raleigh, charged with high treason by entering into a plot to put the Lady Arabella Stuart on the throne."

And here, I am sorry to say, that by his brutal conduct to the accused, he brought permanent disgrace upon himself and upon the English bar. Now, let us see what that was. Look upon the picture here before you; upon that which is thus denounced by one of the ablest men who has ever held the highest position at the bar of England. "He must have

been aware," and I will demonstrate to you that these gentlemen were aware—

"He must have been aware that, notwithstanding the mysterious and suspicious circumstances which surround this affair, he had no sufficient case against the prisoner, even by written depositions and according to the loose notions of evidence then subsisting. Yet he addressed the jury in his opening as if he were scandalously ill-used by any defense being attempted; while he was detailing a charge which he knew could not be established of an intention to destroy the king and his children. At last the object of his calumny interposed, and the following dialogue passed between them—

Compare this with what you have heard at this bar within the last four days—

"Raleigh. You tell me news I never heard of.

"Attorney General. Oh, sir; do I? I will prove you the most notorious traitor that ever held up his hand at the bar of any court.

"Raleigh. Your words cannot condemn me; my innocence is my defense. Prove one of these things wherewith you have charged me, and I will confess the whole indictment, and that I am the horriblest traitor that ever lived, and worthy to be crucified with a thousand thousand torments.

"Attorney General. Nay, I will prove them all; thou art a monster"—

Here, "thou art a coward."

"thou hast an English face, but a Spanish heart."

Here, "thou art a traitor and an assassin."

"Raleigh. Let me answer for myself.

"Attorney General. Thou shalt not.

"Raleigh. It concerneth my life.

"Attorney General. Oh, do I touch you?"

The proofless narrative having proceeded, Raleigh again broke out with the exclamation, "You tell me news, Mr. Attorney," and thus the altercation was renewed:

"Attorney General. I am the more large because I know with whom I deal today—with a man of wit. I will teach you before I have done.

"Raleigh. I will wash my hands of the indictment, and die a true man to the king.

"Attorney General. You are the absoluteest traitor that ever was.

"Raleigh. Your phrases will not prove it.

"Attorney General. (In a tone of assumed calmness and tenderness)"—

Admirably imitated by the learned District Attorney in this case.—

"You my masters of the jury, respect not the wickedness and hatred of the man; respect his cause. If he be guilty, I know you will have care of it, for the preservation of the King, the continuance of the Gospel authorized and the good of us all.

"Raleigh. I do not hear yet that you have offered one word of proof against me. If my Lord Cobham be a traitor, what is that to me?"

And so Surratt might say: "I do not hear yet that you have offered one word of proof against me. If Wilkes Booth was a traitor, what is that to me?"

"Attorney General. All that he did was by thy instigation, thou viper; for I thou thee, thou traitor.

"The depositions being read, which did not by any means make out the prisoner's complicity in the plot"—

The testimony having been taken, which does not by any means make out the complicity of the prisoner in the conspiracy—

"he observed:

"You try me by the Spanish Inquisition if you proceed only by circumstances without two witnesses.

"Attorney General. This is a treasonable speech.

"Raleigh. I appeal to God and the King in this point, whether Cobham's accusation is sufficient to condemn me.

"Attorney General. The King's safety and your clearing cannot agree."

The safety of some men who lie behind this prosecution and your clearing cannot agree. You heard yesterday who they were. You heard some of the motives impelling you to

find guilty the prisoner, because they had convicted the mother.

"The King's safety and your clearing cannot agree.

"Raleigh. I protest before God I never knew—

"Attorney General. Go to; I will lay thee upon thy back for the confidentest traitor that ever came at a bar.

"At last all present were so much shocked that the Earl of Salisbury, himself one of the commissioners, rebuked the Attorney General, saying: 'Be not so impatient, good Mr. Attorney; give him leave to speak.'

"Attorney General. If I may not be patiently heard you will encourage traitors and discourage us. I am the King's sworn servant, and must speak."

If you dare, says the counsel from New York to your Honor, rule the law differently from that which I have laid down, "I will call the majesty of the country to impeach you." I may advert, gentlemen, if my strength holds out, again to this. Monstrous, revolting, shocking was the assault made by the attorney for the prosecution upon that defenseless, pinioned man. I would like to see him talk to him upon the open street so; but it is nothing as compared with what followed after. If my strength holds out, I shall have occasion to advert to another part of the speech of the learned prosecutor which as far transcends what Lord Coke said, as to this poor accused, as that did anything you ever heard from the mouth of a prosecuting attorney before. Against this, gentlemen, I desire to enter my protest. I trust that this case will be a lesson and a warning to every man who shall hold that office hereafter, that he may turn back to the record of this case and see the seal of condemnation of every man of integrity at the bar placed upon such an abuse of authority. But I go a step further. To my utter amazement—I did not believe my ears until I turned to my associate to see if it was so—I heard another thing broached, that the jury in a capital case, where they are to bear the burden of responsibility, and to answer for the discharge of their duty, are not to find a general verdict, but to find a verdict under the instructions of the court; that the court is a part of the Government; the

Government is supreme; they, the prosecutors, are ministering servants helping along the machinery of Government; and as the Government appoints the courts and the courts interpret the laws, the jury are perjured if they do not follow the dictates of the court. Surely, it is not possible in this country, at this day, with the light of information spread around us, with all the intelligence under which we live, with all the learning that has come down to us from past ages, that such a doctrine can be seriously entertained!

Gentlemen, let me call your attention to the history of a Jeffries and a Scroggs and a Wright. They were chief justices of England; they were the right arm of the supreme government, and they hurried men to the scaffold by scores. Their names are accursed to this day, and will be as long as the English language lasts. When at last a jury was found independent enough to stand up against the misruling and the mandates of the judge, and to find a verdict of not guilty, all England rang with shouts of joy. It was a noted triumph for the people against this arm of power. Let me give you a reference to the life of Mr. Chief Justice Wright, who presided at the trial of the bishops, in the second volume of Campbell's *Lives of the Chief Justices*. I refer to the conclusion of the case of the seven bishops, page 109:

"He had already told the jury that, 'anything that shall disturb the government, or make mischief and a stir among the people is certainly within the case *de libellis famosis*. And I must, in short, give you my opinion. I do take it to be a libel.'"

I now read from page 111, after the jury had been instructed by the court:

"The chief justice, without expressing any dissent, merely said 'Gentlemen, have you a mind to drink before you go?' So wine was sent for and they had a glass a-piece; after which they were marched off in company of a baliff, who was sworn not to let them have meat or drink, fire or candle, until they were agreed upon their verdict.

"All that night they were shut up. Mr. Arnold, the king's brewer, standing out for a conviction till six next morning, when, being dreadfully exhausted, he was thus addressed by a brother-juryman:

'Look at me; I am the largest and strongest of the twelve, and before I find such a petition as this a libel, here will I stay till I am no bigger than a tobacco pipe stem.'

"The court sat again at ten, when the verdict of not guilty was pronounced, and a shout of joy was raised which was soon reverberated from the remotest parts of the kingdom. One gentleman, a barrister of Gray's Inn, was immediately taken into custody in court by order of the Lord Chief Justice, who, with an extraordinary command of temper and countenance, said to him in a calm voice: 'I am as glad as you can be that my lords the bishops are acquitted; but your manner of rejoicing here in court is indecent. You might rejoice in your chamber and elsewhere, and not here. Have you anything more to say to my lords the bishops, Mr. Attorney?'

"Attorney General. 'No, my lord.'

"Wright, Chief Justice. 'Then they may withdraw.' And they walked off, surrounded with countless thousands, who eagerly knelt down to receive their blessing."

Now, gentlemen, let me give you the latter end of that man. Soon after this he was turned out of office, and after that:

"He was almost constantly fighting against privation and misery; and, during the short time that he seemed in the enjoyment of splendor, he was despised by all good men, and must have been odious to himself. When he died, his body was thrown into a pit with common malefactors; his sufferings, when related, excited no compassion, and his name was execrated as long as it was recollected."

But let me come down to our own country. You have already had a reference to the language of Chief Justice Kent, than whom there is no greater name among the intelligent legal men of this country. My brother Merrick read it to you from page 366 of 3 Johnson's Cases. I may perhaps read a little further from the language of this great man, vindicating the right of the jury in capital cases to render a general verdict. I detract nothing from the authority of the court. God forbid. The jurors unassisted may run wild, and they are bound to receive instructions from the court; but they are to apply that instruction to the evidence; by the evidence as applied to the law their consciences are to be governed. There is, as the District Attorney has said, a higher law, and the mandate of no judge or any other authority can take an honest man

from the path of rectitude and make him do wrong. I do not read that chapter of Romans quoted by the learned District Attorney as he does. I believe in the right of private judgment, obedience to the law, but resistance to oppression, come from whatever quarter it may. "Render unto Cæsar the things that are Cæsar's, and unto God the things that are God's." But there is another command, not given in words: "Render unto yourselves and to your consciences that which you believe to be in obedience to what is right." Mr. Chancellor Kent has said, *Johns. Cases* 366 :

"In every criminal case, upon the plea of not guilty, the jury may, and indeed they must, unless they choose to find a special verdict, take upon themselves the decision of the law as well as the fact, and bring in a verdict as comprehensive as the issue, because in every such case they are charged with the deliverance of the defendant from the crime of which he is accused. The indictment not only sets forth the particular fact committed, but it specifies the nature of the crime. Treasons are laid to be done traitorously; felonies, feloniously; and public libels to be punished seditiously. The jury are called to try in the case of a traitor not only whether he committed the act charged, but whether he did it traitorously; and in the case of a felon, not only whether he killed such a one, or took such a person's property, but whether he killed with malice pre-pense or took the property feloniously. So in the case of a public libeller, the jury are to try not only whether he published such a writing, but whether he published it seditiously. In all these cases, from the nature of the issue, the jury are to try not only the fact, but the crime, and in doing so they must judge of the intent, in order to determine whether the charge be true, as set forth in the indictment. (*Dagge on Criminal Law*, b. 1, c. 11, s. 2.) The law and fact are so involved that the jury are under an indispenable necessity to decide both, unless they separate them by a special verdict.

"This right in the jury to determine the law as well as the fact has received the sanction of some of the highest authorities in the law."

He then goes on for several pages to review these authorities, until he comes to this case of the seven bishops, which will be found on page 370, and says further :

"Upon the trial of Algernon Sidney, the question did not distinctly arise; but Lord Chief Justice Jeffries, in his charge to the jury, told them it was the duty of the court to declare the law to the jury, and the jury were bound to receive their declaration of the law."

IX. AMERICAN STATE TRIALS.

That is the doctrine promulgated here. That is the doctrine which brings you under the pains and penalties of perjury if you conscientiously render a verdict different from what the court has directed you. He says:

"They did in that case, unfortunately, receive the law from the court, and convicted the prisoner; but his attainder was afterwards reversed by Parliament, and the law, as laid down on that trial, was denied and reprobated, and the violence of the judge and the severity of the jury held up to the reproach and detestation of posterity. The case of the seven bishops is a precedent of a more consoling kind. It was an auspicious and memorable instance of the exercise of the right of the jury to determine both the law and the fact. I shall have occasion to notice this case hereafter, and shall only observe, for the present, that the counsel on the trial went at large into the consideration of the law, the intent, and the fact; and, although the judges differed in opinion as to what constituted libel they all gave their opinions in the style of advice, not of direction, and expressly referred the law and the fact to the jury. Mr. J. Holloway, in particular, observed that whether libel or not depended upon the ill-intent, and concluded by telling the jury it was left to them to determine."

They advised the jury. They did not tell the jury, "If you do not find a verdict according to our instructions, we will fine and imprison you; we will send you to the Grand Jury to be indicted for perjury." They said, "We advise the jury." He proceeds, on page 371:

"The weight of the decisions thus far was clearly in favor of the right of the jury to decide generally upon the law and the fact. But since the time of Lord Holt the question before us has been an unsettled and litigious one in Westminster Hall. Lord Mansfield was of opinion that the formal direction of every judge since the Revolution had been agreeable to that given in the case of the Dean of St. Asaph; but the earliest case he mentions is that of Franklin, before Lord Raymond, in 1731; and that has been considered as the formal introduction of the doctrine now under review. The charge of Sir John Holt in Tuchin's case appears to me to be decidedly to the contrary; and, in another case before Holt, the Attorney General admitted that the jury were the judges *quo animo* the libel was made. The new doctrine, as laid down in the present case, may therefore be referred to the case of Franklin; but in Wray's case, who was tried a few years before for murder, Lord Raymond and the court of King's Bench, advanced a general doctrine which may, perhaps, be supposed to curtail the powers of the jury as much as the decision of the case before us. He said that all the judges

agreed in the proposition that the court were the judges of the malice, and not the jury."

That is a doctrine utterly repudiated in England and in this country, that the court were to judge of malice, and not the jury; and that is the foundation of the new doctrine here sought to be applied to an American jury—

"That upon the trial the judge directs the jury as to the law arising upon the facts, and the jury may"—

Even in that case—

"and the jury may, if they think proper, give a general verdict; or if they find a special verdict, the court is to form their judgment from the facts formed whether there was malice or not; because, in special verdicts, the jury never find, in express terms, the malice, but it is left to be drawn by the court."

He then reviews a series of cases down to page 374:

"The constant struggle of counsel and of the jury against the rule so emphatically laid down by Lord Raymond, the disagreement among the judges, and the dangerous tendency of the doctrine, as it affected two very conspicuous and proud monuments of English liberty—trial by jury and the freedom of the press—at length attracted and roused the attention of the nation. The question was brought before the Parliament, and debated in two successive sessions. There was combined in the discussions of this dry law question an assemblage of talent, of constitutional knowledge, of practical wisdom, and of professional erudition rarely, if ever, before surpassed. It underwent a patient investigation and severe scrutiny upon principle and precedent, and a bill declaratory of the right of the jury to give a general verdict upon the whole matter put in issue, without being required or directed to find the defendant guilty merely on the proof of publication and the truth of the innuendoes, was at length agreed to and passed with uncommon unanimity. It is entitled 'An act to remove doubts respecting the functions of jurors in cases of libel;' and although I admit that a declaratory statute is not to be received as conclusive evidence of the common law, yet it must be considered as a very respectable authority in the case; and especially as the circumstances attending the passage of this bill reflect the highest honor on the moderation, the good sense, and the free and independent spirit of the British Parliament.

"It was, no doubt, under similar impressions of the subject that the act of Congress for punishing certain libels against the United States, enacted and declared that the jury who should try the cause

should have a right to determine the law and fact, under the direction of the court, as in other cases."

What does that mean? The Congress of the United States has declared that the jury, in the case of libel against the United States, shall have the right to determine the question of law and of fact as in other cases.

"And before the passing of that statute the same doctrine was laid down in full latitude, and in explicit terms, by the Supreme Court of the United States.—3 Dall. 4.

"The result from this view is, to my mind, a firm conviction that this court is not bound by the decisions of Lord Raymond and his successors. By withdrawing from the jury the consideration of the essence of the charge, they render their function nugatory and contemptible."

Shall we hear anything more from the other side of the right of the court not to instruct, not to charge, not to advise, but to control? Shall we hear again that by the law a juror is perjured who renders a general verdict contrary to the instructions of the court? Shall we hear a threat held out to an American jury by the prosecuting attorney, who has the right to send to the Grand Jury whom he pleases, that if you fail to follow the mandate of the court you will be subject to a charge of perjury? It is the duty of the District Attorney if he knows the fact that a perjury is committed, it is his bounden duty, to send the witnesses to the Grand Jury; and if you commit perjury by disobeying the orders of the court he must send the case to the grand jury if the argument of the learned gentleman on the other side be right. Against this monstrous doctrine I desire, if it is the last speech I shall ever make to a jury, to enter by most solemn protest. I desire to set upon it the seal of condemnation. I do not say this, gentlemen, on your account, for, as I have said, I know every man upon that jury personally, and every man there knows me. I say nothing to flatter you, because you would despise it if I did. But I say it for the sake of the law; for the sake of the law of my country. I condemn, I repudiate, I trample under foot any such doctrine as this,

that a juror commits perjury because, according to his conscience, he renders a general verdict of acquittal or guilty.

I said to you, gentlemen, at the outset that this case was in a small compass. I am most happy to agree in this at least with the learned counsel from the city of New York. It is within a small compass. And yet, will you tell me what all that means (holding up the book of evidence)—two-thirds of it made up of evidence for the prosecution. With what is it burdened? There is the testimony as to the assault upon Mr. Secretary Seward. The learned judge says it is evidence in the case; that you are to look at it as one of the *indicia* enabling you to ascertain whether this accused party killed the President himself, or was in a conspiracy to kill; the result of the conspiracy being that he was killed by one of the conspirators. Was that the object of the introduction of this proof? How did the District Attorney apply it in that long harangue upon the assault upon Mr. Seward? In all that he said, painting it with prepared and studied thought, reading from his manuscript, endeavoring to excite the horror of every individual on that jury, endeavoring to enlist prejudice and passion, not one word did he say connecting it with this great fact of the murder of Mr. Lincoln. I agree that it was a very fine piece of word painting; being admissible in evidence, it must of course have some effect; but I am at a loss to conceive how the fact of an assault with intent to kill made upon Mr. Bohrer by one man is evidence of a conspiracy to kill Mr. Berry, who is killed by another man. It is beyond my comprehension.

I am not now talking of this new scheme, this admirable invention of the enemy. I am talking of the indictment, and the case made in the indictment. For what purpose have we that terrible picture drawn of the slaughtering of poor, wasted Union soldiers along the railroad, and that terrible fight with a gunboat by the little cock-boat crossing the river! How do they bear upon this question of the killing of an individual? I shall have occasion presently to talk to you of the other branch of the case, though I am afraid my strength will not

enable me to do so. I speak now of the indictment against John H. Surratt for killing an individual. The learned prosecutor has not seen fit to do so; but I ask the gentleman who is to follow to make it plain. I am not talking about the President of the United States, or the Secretary of State, or a state of war; I am talking about a different thing; and I want to know upon what principle they can apply this evidence to show that John H. Surratt was combined with Booth in a conspiracy to kill an individual. It is done to excite passion and prejudice. I wish I had here as I had yesterday, the life of Julius Cæsar, written by Napoleon. I would like to read from that heathen orator a passage as to what men should do who have to pass upon the lives of individuals; the opinion, not of a Christian man, but of a heathen; not one looking beyond the grave, but one who, in the very same speech says, "we perish in the grave." He tells you that when weighty matters are to be considered, affecting a man's life, there should be neither passion, nor prejudice, nor feeling. This is done to invoke passion, prejudice, and feeling in the mind of the jury, and to extort from their distorted judgment a verdict which their cooler judgment would reject. . . .

I have already said that the court cannot, nor can the jury, take any notice of the fact that the victim of this assassination was the President of the United States. It is not in the bond; it is not pleaded. We are not upon our defense for that. We have had no notice of it until it was suddenly sprung upon us by the active brain of the counsel from New York. The indictment is not that the killing was in time of civil war, or that the object of the conspirators was to advance the interests of the rebellion. The indictment is that this party killed Abraham Lincoln, and nobody else. There is no allegation of any fact from which it can be found that Abraham Lincoln was President of the United States; or that this country was not in a state of the most profound peace. This is the error into which the learned counsel have fallen,

and I say with the utmost deference and respect, I fear into which they have in part led the learned judge, without having presented fairly the indictment to him. They seek now to retrieve themselves by this new proposition, that to kill the President of the United States, under such circumstances, is an offense in which there are no accessories; an offense to be tried by different rules; an offense never dreamed of by the law-makers of this country; an offense not known to the laws of England, because there is no such authority in the law of England; an offense impossible here in this Republic, where we know no lords or commons; where we have no king; where there is no such offense as compassing the death of the sovereign; where there is no living, acting sovereign, but where the sovereignty is in me, in you, in all of us, and certain powers are delegated to Government. Utterly routed from every possible ground of assault against the accused for killing an individual, they seek to throw up an outward defense, and renew the assault from this masked battery.

The learned counselor (and he must be learned, for he has learned that which no lawyer within the sound of my voice ever knew before) tells us that this doctrine—anti-republican, hostile to liberty, that a man shall be put upon his trial according to all the forms of law upon a perfect indictment, and when he comes to be tried, that he shall be tried for a new and different offense, to be created for the first time out of the head of the judge—he will find authorities for. He did not condescend to enlighten us with even as much as the District Attorney gave us—not even a school-book. Did my learned brother recollect a speech of his own on the arrest of General Dix? Did he recollect when he told Judge Russell, in the city of New York, that the President was not a dictator; and if he were a dictator, “arrest him, depose him, assassinate him.” No, sir; not even if he is a dictator, do not assassinate him. With your own strong arms and manly hearts rally together and take away the baton of the dictator by the ballot box; and if you cannot, take it away by the cartridge box and bayonet; but do not assassinate him.

They seek, I say, to retrieve themselves by this new doctrine now, after the evidence is closed, and after they have ruled out step by step, upon technical rules, on the ground of the case made in that indictment, evidence for the defense going perfectly to acquit that young man of all participation in this murder—evidence offered in writing; a witness on the stand, with two other witnesses here, men of the highest character and respectability; with our written offer to prove his whereabouts from the 24th day of March until the 18th day of April—ruled out and rejected, because they had not in their evidence made a case to be answered by such proof. When we offered by General Lee to prove that this young man arrived in Canada on the 6th of April, that he was there until the 12th, that he went then to Elmira on business under his (General Lee's) employment, that he transacted the business at Elmira, that he returned and reported, showing that he must have been there during that time engaged in that business; when we offered in writing to produce that evidence, they objected. They said, "No; we have made no case to which this is in reply." And now, after availing themselves of this ruling of the court, they have the supreme audacity to say to you, "Gentlemen, this man participated in that assassination in order to further the ends of rebellion, and yet we shut out from you proof of what he was doing at the time."

"Oh, judgment, thou art fled to brutish beasts,
And men have lost their reason!"

I say, gentlemen, there is no such doctrine; and I say further, if there be such a doctrine, there is no man in that jury box who would not rather sit there until he shrank "to the size of a tobacco pipe," rather than render a verdict against a party under such a doctrine. If you did, you would have no right to go home to your wives and children; you would have no right to the hospitalities of life; you would have no right to the cheering consolations of those with whom you have been accustomed to associate; for you would have

done a deed which stamps you and your posterity with eternal disgrace, by convicting a man without law and without reason.

Gentlemen, I wish I were a younger man; I wish I could knock off thirty years of my age, and fight this battle here. But I am too old; younger men must take it up. I would fight it to the death. I would fight as long as I had breath. I would bring up my children with the nurture and admonition, "You shall not find a man guilty of an offense unless it be charged in the indictment; and you shall not go outside of the indictment to find weapons to kill unlawfully, never recognized before."

But I am breaking the rule I laid down for myself. I have no strength to bear excitement nor to endure the fatigue of discussing this case as it ought to be discussed.

Gentlemen, the charge in this indictment, as I have endeavored to show you, is the killing of Abraham Lincoln, and a conspiracy to kill him as an individual, not as President. The charge is of killing him as if the country was in a state of profound peace, and not in time of war. The charge is of killing him from malice aforethought, and not for the purpose of helping the rebellion. The case is to be tried, then, by the ordinary rules; the same rules of evidence are to be applied, the same judgment of the jury is to be applied, the same verdict is to be rendered of guilty or not guilty. I have not much doubt how it is going to be. I am speaking now not of this case specially; I am speaking of the laws that govern you, me, and everybody else. I am speaking of a principle, not of an individual case. I have no more fear about this case than I have of my own; I have not had for weeks; but I am speaking to protest with all my heart and soul against this monstrous doctrine. The case is to be tried by the ordinary rules. No authority has been cited, not a horn-book, not an elementary writer, not a county court decision in favor of the suggestion which is made as the law of this free country, that a man may be indicted for the ordinary offense, the well known common law offense of killing, and shall be

tried and convicted upon another law not written and not found in the books.

Now, gentlemen, a word or two as to the proof in this case, for I shall have to hurry through what I desire to say, in order to give you rest, and to close, so far as I can, my connection with this case. I came into it most reluctantly. I was burdened with other business. It was in the midst of our civil court. At my time of life I did not seek honor or renown. I knew that these parties had no means to recompense me for my labor. I believed I should have to furnish out of my own pocket funds for the ordinary expenses of the trial during its progress, instead of receiving compensation. I wished to avoid the excitement, wear, and tear, of such a case. But if you had seen her who came to me, you would know I could not have done otherwise. She did not weep; not a tear fell from her eyes. The fountain of tears had been dried up. Two years of long, continuous suffering had wasted that fountain. The eye once bright and animated was dim, the countenance depressed. The annals of memory were traced there. To be sure, it was lighted up with the hope that hereafter she might one day again see her blessed mother. Yet I refused. I refused until my two younger brothers undertook to take the laboring part of this case, and well and faithfully have they discharged it. For two months, in season and out of season, by day and by night, at home and abroad, with expense, toil, and labor, have they diligently discharged their part of this work. You heard yesterday how admirably, how gloriously one of them triumphed in the results. I doubted this case very much. I had read that conspiracy trial. I thought I saw something of the implements which might be used and manipulated by the Government of the United States with its vast treasury and exhaustless resources, and I feared; but when I went into that young man's cell and heard his story, and as I traced out the history and found every word he told us verified to the utmost—for he kept nothing back, and concealed nothing—my heart glowed within me, at my old age, that I could stand up and defend

him against wrong and oppression. I say I have not for weeks feared the result; I have never feared it since the Government proved his innocence a month ago. What is the proof? That the President, Abraham Lincoln, was killed by John Wilkes Booth alone, when John H. Surratt was four hundred miles away, when he was ignorant of what was being done. Is not that so? What is their proof? They bring that accomplished gentleman Dr. McMillan, with the most extraordinary retentive memory that I ever saw, when it suits his convenience, but who, happily for us, forgot that he had given a written receipt, and when that written receipt was presented to him it changed the whole tenor of his testimony. I ask you to look at that witness on the stand. What is the use of open oral examination of witnesses? It is that the jury may look upon them, and see them eye to eye, see the nervous flutter of the cheek, see the quailing of the eye-lid; that they can see whether or not a witness intending to condemn a prisoner can look upon him and swear against him. It is that they may see whether the pulse beats strong and fair, whether the nerves are strung or not. They can tell whether it is a face of brass or a face of innocence and integrity. So it was here. Never with more confident strut did one of these little bantam cocks mount upon a fence and crow than did that man, as he first flapped his wings and flashed my brother Merrick what he thought was a gross insult. When he sat here and heard the testimony of Father Boucher, your eyes were on him; mine were. I tell you he could no more look that man in the face than Mr. Carrington can look in John Surratt's face when he is acquitted. I tell you, when he came upon the stand, recalled by them, and undertook to tell of his controversy with the priest, he had had it all rehearsed. He had told the learned cross-examiner what to ask the witness; he had studied it all out, and he thought he had his card written, and he testified exactly as if he believed it. But when I handed to him that written receipt, and asked, "Is that your handwriting;" the more than two years' service for which the bill had been placed by him in

the hands of a bailiff against Father Boucher dwindled down into the last spring, and the spring spread out to the 21st of June, and the service came up to the 21st of June, the date of the receipt, and therefore within a few weeks before his alleged quarrel with Father Boucher; and he saw that he had lied straight through. You saw the quivering of the man's nerves; you saw the light go out from that flashing eye which had cast a lurid flame upon my brother Merrick. I thought he was going to jump out of the box there and whip him. You saw how he quailed, not before the cross-examination, but before the eyes of these twelve jurors looking at him. You saw the craven—craven because detected. Still he is their witness, and what does he prove? If he proves anything on the face of the earth, and I do not know that he does prove anything, he proves that Surratt told him he had received a letter at Montreal calling him to Washington, and telling him what? That they had fixed a nice scheme for the abduction of the President, had the horses all in training; "come booted and spurred, and with everything necessary for an equipment; we will make it a handsome turn-out; it is going to be a pretty affair; it will give us glory and renown to capture the President?" No; he said, "We have had to change the plan." McMillan said to you that Surratt told him the plan had been to abduct the President, and he received a letter from Booth telling him to hurry to Washington; it had become necessary to change their plan. Is that all? Where is brother Wilson? He kept a note of it. McMillan says Surratt told him that when he got to Elmira he telegraphed to Booth. Where? At Washington? Oh no! but that he telegraphed to Booth at New York. Then, when he was in Elmira, on the 13th or 14th of April, and telegraphed Booth in New York, did he not believe that Booth was in New York? Have you not proved it? Have you not proved the very change of plan, and that he came as far as Elmira and telegraphed to Booth in New York? And no mortal man has ventured to swear yet (I do not know what may come), to this jury at least, that whatever that change

of plan was, it was ever communicated to this young man. And yet they have the boldness and effrontery to stand up here and rake him by the hour, call him all sorts of bad names—villain, assassin, coward; appeal even to the chivalry of the State of Virginia, and ask, in tones of irony, whether he is a representative of the chivalry of the South! The representative of the United States does this, prosecuting a man for his life! After having produced this proof, that he had nothing on earth to do with the assassination, they have the extreme audacity to ask you for a verdict!

I say, then, gentlemen, first, that Surratt was four hundred miles away, ignorant of what was being done; and second that, according to their proof, the plan of the conspirators, whoever they were, and whatever that plan was, had been changed, and the new plan had not been communicated to Surratt. That is their proof. But they are not satisfied with it. This case assumed a new phase last winter, and that new phase has brought to light an instrument of proof which reflects the deepest disgrace upon the conductors of the prosecution before the military tribunal, who suppressed testimony which would have acquitted a woman—a woman, not a man; not a hard, vigorous nature; not a wild, reckless man; not a foe to society; but a pious mother, a loving woman, kind and gentle, who had so touched her servants, as you heard from the mouth of that colored woman Rachel Hawkins; who had gathered around her a circle of friends who loved and respected her; who had two orphan sons, one of whom would now be her protector if he were at liberty; the other, the elder brother, Isaac, in Texas. They suppressed that diary written by Booth just about or at the time of the assassination; that diary, which exculpates her as perfectly as though she had never seen him; that diary, which speaks from the grave; that diary, written in the awful presence of his Maker, before whom he was shortly to appear; that diary, which shows who and what the man was—a fanatic, an enthusiast, a madman. He inherited it. His grandfather, old Richard Booth, was the most thorough red republican that ever settled in Maryland.

He used, in the spirit of his fanaticism, to run away slaves into Pennsylvania, and his son, Junius Booth, had to pay for them. He christened his first son Junius Brutus Booth, and he made him christen his eldest son Junius Brutus Booth, and this son, John Wilkes Booth, inherited the traits of the father. He was an accomplished man. He was not only an actor, but he had the manners of a gentleman, and a most wonderful control over man and woman. He was admitted into the best society in this city, and at the time of his death was intimate in families which I shall not name, but families against whom no human being can utter reproach. Accomplished young ladies not only permitted him to wait upon them, but to take them to the theatre and elsewhere. But he had running through him this vein of insanity, and above it all rose that pure, fervent, and indescribable affection, the love of a son for a mother. I have been told by a gentleman who knew them that when he thirsted to go South and join the rebellion, his mother restrained him. Putting both hands upon her, he said: "You are no Roman mother or you would tell me to go; you know my heart is there." I said he had a wonderful power and control over men, and wonderful was the power he exercised upon the stage, making his \$20,000 a year. He has gone, as he deserved, to a dishonored, felon's grave.

I say, gentlemen, they have shown that this change of plan was not communicated to John H. Surratt. They show by these two witnesses. The prisoner at the bar himself is one whose testimony is invoked through that malign spirit McMillan. He is invoked to testify to the fact. And wonderfully has that man woven what he calls the "revelations" with the facts of this case. Surratt did leave Montreal at the time he stated; Surratt did reach Elmira at the time; Surratt did not come any farther than Elmira at that time, and upon these facts he has built the further "revelations" which are contradicted by all the proofs in the cause. I say they have proved, not only by McMillan, but by this diary, that Surratt, if he was in the former conspiracy, was in a conspiracy

to abduct; that the plan was changed; that if he started to come to assist in the new plan, it was a plan of which he knew nothing, and they have shown that he knew nothing. Is not that the end of this case? I am taking their own doctrine. I am taking them upon the monstrous doctrine they have put forth, that to kill the President is a new, unheard-of crime, for which new laws are to be made by the court. They must show that he intended to kill, and contributed to the act; and they have taken all the trouble to prove that he did not. I throw out of view, discharge from consideration, those mighty men, Lee, Dye, Rhodes and Cleaver, and on top of them put Susan Ann Jackson, and alongside of her I put my brother Vanderpoel—Susan by far the most respectable of the two. I wish I could tell you, gentlemen, what we tried to get Vanderpoel back for cross-examination for. We tried to get several of the witnesses back for cross-examination. I wish I could tell you what Vanderpoel said before he left the courthouse, as to how he came to make the statement he did make here. I throw out of view all these witnesses; I set them down all as mistaken—I will not say manipulated; I will not say corrupt; but mistaken, for they certainly were mistaken when they were taken here. I take the proofs confirmed by irrefragable testimony. Now, what are they? I take the proof of the handwriting of Booth, which cannot lie; it may be changed. I take the proof of the handwriting of John Harrison on the register at Montreal. Who says Booth did not tell the truth when he tells you that for six months they had labored to abduct, and that they found it necessary to change their plans? That is the proof, and who says it is not true? Do they not themselves offer evidence to show that in October the plan of abduction was in contemplation? Do they not show 'by that accomplished young man Mr. Weichmann (a weak man indeed!) that an effort was made on the 16th of March to do something which failed? And from that time forth John Surratt is not brought in connection with any of the parties concerned in that conspiracy, with the single exception of that young gentleman—

I suppose he is to be called a gentleman; it will not do to call him, as my brother, the District Attorney, calls the defendant, a rascal, a villain, a liar, a perjurer; but I think I shall show, before I am done with him, what sort of a gentleman he is, fit to associate with Conover, Cleaver, and Montgomery. They prove by him that on the 16th of March this effort failed; John Surratt rushed into the room in the greatest state of excitement and exclaimed, "I am ruined; all my prospects are blighted; Weichmann, can't you get me a clerkship." From the sublime to the ridiculous! The only time when they are brought not together, but in juxtaposition, after that, is stated by this same accomplished young gentleman, who has the right to open all the drawers in the room in the Philadelphia customhouse, where he was, whether he had the keys or not. This same young man says that he swore on the trial at the Arsenal that he saw him two weeks after that; but that would not do, because he found that John Surratt was in Canada; so he comes down to the 20th, four days afterwards, and says that on the 20th he went to Mrs. Murray's to see if there was a room engaged there for Payne. Mind you, Payne had not come; John Surratt went there to engage a room for him; but he does not bring John Surratt in connection with Payne, who did not arrive until the 27th, according to his story; and he never saw Booth, Atzerodt, Payne or Herold in company with John Surratt after the 16th of March. If so, I cannot find that it has been stated in this testimony, and I looked carefully for it this morning. I cannot find that he brings John Surratt in company with any one of these parties after the 16th of March, the day of the final defeat of their project, whatever it was. On the 24th of March he starts him on his voyage to Richmond. He brings him back from Richmond on the 3rd of April; he brings him to his mother's house between six and seven o'clock that evening, has him to Holahan, goes out with him, according to his account, to get oysters, and leaves him at the Metropolitan Hotel to sleep there. Holahan tells you that he was at Mrs.

Surratt's between nine and ten o'clock, after he had gone to bed, that night.

I say then, gentlemen, Weichmann has proved that from the 16th of March, when the effort was made, whatever it was, there was no further communication between Surratt and any of these parties; and John Wilkes Booth tells you from the grave that the project to abduct failed after an experiment of six months, and they found it necessary to change their plan; and McMillan tells you that while Surratt was in Montreal he received a letter from Wilkes Booth telling him the plan had been changed, and he got as far as Elmira only and telegraphed to Booth in New York, and there he remained. Whether he did really telegraph is another matter. The prosecution ought to have shown the telegram if it was so. I rather think, if they could, they would have shown it; for they have not only gone up to the moon and sky-larked there, and into the clouds and mists of heaven, and amused themselves with side-real observations, but they have gone into the depths of the earth to hunt up and root up dead bones as well as living things, in order to excite your prejudices in this case, and extort a verdict from prejudice, not from judgment, nor from the heart.

I said that the assassination was committed when Surratt was four hundred miles away, when the plan had been changed without his knowledge; that according to this showing the conspiracy had been abandoned and a new plan formed when it was physically impossible that Surratt could have assisted in the execution of it. Now, I will show that it was physically impossible.

The learned District Attorney, with a tremendous figure, says that John Wilkes Booth killed the President, and has gone to—I will not name the place—but he has left Beelzebub here to work for him. I think he must have had some familiar spirit with him, or else I should like to know where he got the rakings of that place that he produced on the stand as witnesses here—men so utterly corrupt and debased by such shocking crimes as humanity stands back aghast to see them

put upon the stand by respectable counsel as credible witnesses. But has he not a "familiar?" We have had a gentleman in black here—I was looking around for him a little while ago; I think he is foster-father to this case. Where has he been? Raking the valley of the Susquehanna with that detective, Roberts, trying to extort something from our witnesses, respectable men, by which they could be entrapped into a contradiction. He sat by the counsel from New York as he put the questions he did on cross-examination to men of the highest character—such a man as Cass. I am only sorry he is a Black Republican; that is the only thing I know against him; but he is a thoroughly honest and upright man. I think men who are red republicans are crazy, and I am sorry for them. These questions were put to Cass: "Did you not talk with Colonel Foster?" "I don't know him." "This man along with me; did you not in his presence talk with Mr. Roberts?" "Don't know him." "Did you not talk with Mr. Wilson?" "I don't recollect." "Did you not talk with me when Mr. Wilson was standing by, and did you not say so and so?"—insinuating to this jury a corrupt charge against that honest man. If he had had any reason to make any such assault, not a word would have fallen from my lips; but there is a man as honest and as well valued in his city as my learned brother is in New York, who, by impeachment, insinuation, is to have his testimony shaken by calling his attention to what may have passed between him and the counsel or between these two or three persons round about them; and he dared not put one of them upon the stand to say that Cass did not tell the naked and pure truth. If I had done that, I should have deserved the rebuke of the court.

But that is not all. I shall have occasion, probably, if my strength holds out, to point to two or three more such cases, where the counsel says to a respectable physician, "Have you not been indicted for malpractice in your profession? Have you not been arrested for it? Did you have a consultation with Dr. Bissell? Did the man live after that consultation?" I say it was as gross an insult as I ever heard offered to a wit-

ness on the stand, and the greater, because the counsel does not venture to undertake to prove any one of these insinuated allegations.

I did not ask a witness on the stand—and so help me Heaven if I ever practice longer I never will ask one—a question to insinuate a prejudice against him; and I will ask him nothing about which I have not the proof. When I ask a witness on the stand any question tending to impeach his integrity or his moral character, I may show heat and excitement, perhaps, but I have the proof by me to sustain it. I never have assailed, I never will assail, the honest integrity of a witness without the clearest proof of his falsehood and perjury. I have ever, and I trust if I live to try another case before a jury I will still charge home to a witness whom I believe to be corrupt, that which I have proof of to show that he is corrupt; but, so help me Heaven, if I ever say to an honest man, an upright man, one word to insinuate guilt without the proof of it, may I be turned out of the society of honest men and made to seek my support with criminals.

Again, one word more, for I speak now as a friend. Look at the case of Mr. Nagle, of Montreal. Gentlemen, you saw that witness upon the stand. You saw him about here. He was with us daily while he was here; a gentleman, a man of character; a man employed by my son to assist us in preparing the case on the other side of the line; a man who worked industriously for us; a man who came here with the witnesses; a man who was paid for his expenses, and the costs of those witnesses. A witness is put upon the stand, not to assail him, but to support the character of McMillan, and the counsel asks that witness as to the character of Mr. Nagle! Will he dare to say to you that he could bring a witness here to impeach it? I should like to see such a witness! I know something of his character and standing there. I know that Mr. Nagle is a high-toned gentleman. He may have political enemies; and after what has taken place here I would not like to say that no man could be found to discredit him. I rather think you could go into the city of Washington today

IX. AMERICAN STATE TRIALS.

and get fifty men to say they would not believe me on oath. I judge so, at least, from articles that have appeared in a dirty sheet in this city from day to day, charging me with corruption; with trying to bribe Hobart as a witness; charging me with getting up a scheme to play a trick upon the prosecution by sending a parcel of Jews to swear falsely, and that a detective traced them to my room. Gentlemen, the history of that transaction has been written in the public newspapers, and when you get out of that jury box you will see it, and you will see where the corruption was.

Again, let us see where this assault goes. There has been a singular character exhibited in the course of this trial—perhaps rather a rare one; he would make a figure in a novel—I mean Stephen F. Cameron. He is eccentric; he is a man of genius; he is impulsive; he is imaginative; and people who hear him talk, stolid blocks, who cannot understand a little coloring and exaggeration, set him down as romancing; and fellows who have an idea a little above an oyster come here to tell you that he is imaginative and erratic; but no one with a single exception, has had the hardihood to tell you he is corrupt. And who is that one? Never mind, let him pass. There were two who spoke against him; and the other is a little fellow by the name of Torbert. He tells you that he believes Cameron was a religious man, and yet, when he is asked by Mr. Alexander if he would believe him on his oath, he says he would not. That is the sort of witnesses they bring here to assail Cameron—a man who says Cameron was a religious man, and yet he would not believe him on oath. Either the fellow is *Americanus socius societatis* (the A. S. S. being the letters of his title), or else he does not know what religion means; and if in this country, and in this enlightened age, a man does not know what religion means, he is a pretty judge of character!

I say, then, gentlemen (for I have been led off by these digressions), that the prosecution have shown that it was impossible that Surratt could have assisted in the execution of the plan of murder; and I am going to show it. I under-

stand that the gentleman in black has been correcting the map which has been exhibited to you. Now, gentlemen, if you have not taken notes of the time, I insist that you shall do it at once, for I take it for granted the gentleman who is to follow me, as I have no reply, is going to demonstrate an impossibility. His "familiar," the gentleman in black, has had hold of it. Surratt left Montreal at 3 o'clock on the 12th of April. He reached Rouse's Point at 5:45. I want you to get these places and times down correctly, and then I should like to see the conjuration on the other side, with the aid of the gentleman in black, to change these figures. He reached St. Albans at 7:25—I pass over Essex Junction; he got to Burlington at 9:05; and to Troy at 5:20 a. m.; and Albany at 5:45 a. m. on the 13th. There cannot be any mistake about that. If there is any dispute about the evidence, I desire to have it put right now. No correction being offered, I assume that, whatever time he started from Montreal, he reached Albany at 5:45 on the morning of the 13th. Our time tables brought from Albany here, and now in the possession of the clerk, show that the first train west from Albany left at seven o'clock in the morning and reached Canandaigua at 4:52 in the afternoon. Mr. Guppy, the railroad superintendent, brought by the prosecution, proves that that was the route, and the only practical route, to Elmira. There is another intermediate route, about which they have taken care not to give any evidence; but the route by Elmira is the only route about which we have any testimony, and it is the route on their map.

Then we have him leaving Montreal at three o'clock or 3:30 on the afternoon of the 12th; and by no possibility could he get to Canandaigua before 4:52 on the afternoon of the 13th—twenty-five and a half hours from Montreal. He is at Canandaigua, then, on the afternoon of the 13th. It is not only proved, but it is conceded, and conceded of record, that he was in Elmira on the 13th. Now, he must go to Canandaigua before he could get to Elmira, and it takes two hours and a half to run down to Elmira; so that, if the cars had connected and he had got on a car for Elmira immediately on his ar-

IX. AMERICAN STATE TRIALS.

rival at Canandaigua, he could not have reached Elmira before eight o'clock on the evening of the 13th. *Quod erat demonstrandum*, as we used to say when I was a boy at school. That is mathematics. He could not get to Elmira before, unless he was a bird, as Sir Boyle Roche would say; he was not a bird, and could not be in two places at the same time. Unless he was a bird, to fly across from Albany, and to go on the line that a carrier pigeon would have traveled, he could not have got to Elmira until eight o'clock p. m. on the 13th. That is the Government proof. That was their proof a month ago. I was willing to stop the case. I thought that the representatives of such a Government as this, when they had proved a man's innocence, would enter a *nolle prosequi*. You may smile, but I tell you there is no greater condemnation on any man than to prosecute a case involving life when the proof is clear against him and in favor of the accused. And I say now, that for the prosecution to shut their eyes against a case thus made out by themselves is worse than judicial blindness; it is willful blindness; and to prosecute a man for his life after they have proved his innocence—I will not trust myself to say what it is.

I say, if the Court please, that unless this new doctrine is to prevail—and it is for you, gentlemen of the jury, to say, by rendering a general verdict, whether it shall prevail; unless a man is to be tried for that for which he is not put on trial, and of which he has had no notice; unless you are to adopt the terrible scheme of the other side that you may invent new laws to cover past offenses—this man was acquitted more than a month ago, and the Government knew it. They could not shut their eyes. It would be an insult to their intelligence to suppose they could shut their eyes to it. The leading counsel on the other side has certainly shown great skill and intelligence in conducting this case after he had proved the innocence of the party, piling testimony upon testimony—to do what? To let the District Attorney prove Mrs. Surratt's guilt. That is what they have been trying; that seems to have been the question at issue here—not the guilt or innocence of

John Surratt; he is cleared; he is cleared by the voice of the witnesses on the part of the prosecution; he is proven not guilty, and the Government is to prove that his mother was guilty! They proved this prisoner's innocence beyond the hope of the most ingenious and elaborate dissection; and we have fortified the case by the proof on the part of the defense, so that I defy the gentleman in black himself to disturb it.

When we had that excitable, nervous cutter, Carroll, on the stand, I really thought the poor fellow had got into some trap. He said that Surratt was there on the 13th, or 14th; that he knows he was there, from the fact that Mr. Ufford left for New York on the 12th, and came back on the 15th. Well, did you ever see a humming bird jumping at a flower, flying all around it, picking into it a little, with more intense satisfaction than the learned counselor from New York buzzed around Carroll. He actually grew waspish after a while, and every now and then he flew at him and stung him; and Carroll flared up at last. At first it was honey sweet, but after a while Carroll began to see that there was a sting in that humming bird's tail, and he got up his temper a little, and I really thought they were going to trap him. What did he tell you? That on the 12th Mr. Ufford left for New York; on the 15th he returned; and between those two dates this strangely dressed man came into that store; that he never saw such a costume before; that he examined it carefully; that he talked with him twenty or thirty minutes; that the man came the next day or the same afternoon, and he saw him again; that he saw him here in jail, conversed with him, saw his manner, saw him sitting in court, swears that it is the same man, except that his goatee is a little longer now and not quite so broad as it was then. And they tortured that man; they threw their little squibbs at him that stuck for an instant and irritated him; but when he came to peel off, and they put a man on the stand to contradict him, he confirmed every word that Carroll had said. Why did they not call the gentleman in black and Mr. Covell and Mr. Knapp, as to

whom they interrogated Carroll. Roberts, the witness whom they did call, stood outside while Knapp went in and talked to Carroll, and was so posted as to hear what they said! A man was sent into the store to talk with him as a neighbor and friend, to try to get something out of him, with a spy outside to listen, not to take part in the conversation, but to twist it. Fortunately Roberts was an honest man. Unless it was to twist it, no counsel at this bar would have had the audacity to ask the witness if he did not say so and so, unless the gentleman in black at his elbow had told him he had said so. But Carroll not only comes out unscathed, but fortified. If Carroll tells the truth, he saw the prisoner in Elmira on the 13th and 14th, or the 14th and 15th. If it was the 13th, he could not have seen him till after 8 o'clock in the evening; if it was the 14th, he saw him at lunch time.

You saw Mr. Atkinson on the stand; no attack was made on him; well-dressed, "with good fat capon lined," an alderman of the borough of Elmira, an educated man. He sits there quietly, and tells you that after lunch on the 13th or 14th, he came into the store and saw a strangely dressed person talking with Mr. Carroll, who was there ten or fifteen minutes. He went and sat down where he could hear them talk, so that he could hear his voice and familiarize himself with its tones, and notice his mode of expression—where he could look at him and see his action. He came here, went into the jail, had a conversation with him, and had not a shadow of doubt that he certainly was the man he saw in Elmira on the 13th or 14th. Now, they have put the prisoner where he could not get to Elmira by lunch time on the 13th. Have they not? They put him in Montreal; they took him by Albany around to Canandaigua, and from Canandaigua to Elmira, where he could not get before eight o'clock on the evening of the 13th. I am giving the earliest time. It was not quite so early when he got there. So this gentleman must have seen him after lunch on the 14th. Two and two make four, according to the arithmetic I learned when I was a little boy.

Again, I take Mr. Stewart. You saw him, and you have no doubt of the perfect straightforwardness and truth of his testimony; you have no more doubt that these two gentlemen knew what they do say than you would have of our own brother. Mr. Stewart tells you there are two stores separate, yet communicating, with a large arch between; that he was in one store—the hat, cap, boot and shoe store, etc.—and that Carroll was in the other, when he saw a strangely dressed man in a costume he never saw before, walk into the gentleman's furnishing department and enter into conversation with Mr. Carroll; that he was attracted by the man's appearance; went round the counter and came and stood near by, where he could hear the tone of the voice of the stranger and note his manner. He went back into the other store, returned again, walked round him, and then went round the counter back again. He was there twenty or twenty-three minutes. He tells you that it was after his dinner time, and his dinner he testifies was about twelve o'clock. It was after he had returned from dinner, and was between twelve and one o'clock. Now, what day was that? It was the 14th, for there was no doubt that the prisoner was the man he saw there. He told you he was struck not only by his dress, but by his voice and manner; he heard him talk; he saw not his back when he was riding rapidly away; he did not see him riding up the street when he himself was in a buggy; he did not meet him in the street, as Lee did; he did not hear him calling the time, as Dye did, "ten minutes past ten"—most awful tone! but he heard him talk, familiarized himself with his voice and his manner, and he then comes here, sees him, talks with him, and identifies him as the same person. Is there any doubt about it?

I next come to Mr. Cass. What does he tell you? In vain they attempted an assault upon him. No man in armor ever withstood an assault better than he did, clad in the panoply of truth. He tells you that on the morning of the 15th, between nine and ten o'clock, or about that time, as the news of the death of Lincoln was being received, he had dismissed

his clerks, and was closing his store himself, when he saw a stranger on the opposite side of the street, who he took to be a friend of his from Canada, dressed in a costume he had never seen any one else wear. He watched him crossing the street, supposing he was coming to see him. Before he reached him he found it was a different person. He turned around to close his store, and had gone not probably ten feet when he saw that the stranger had followed him into the store. The man asked him for shirts of a particular make, which he had not, and he showed him others. The conversation then turned upon the cause of closing the stores, and the stranger made a remark which was somewhat offensive to Mr. Cass. Mr. Cass took exception to it; they enter into conversation; it is explained; and they part friends; at least the slight difference has passed away. He notes the man's manner, his voice, his appearance; he comes here and visits the prisoner in the jail, and says, "I talked with him; I saw his manner; I heard his voice; I know that he is the man."

Now, gentlemen, need I weary your patience with a further vindication of this young man? I think not. I say they have proved a change in the plan, which change was not communicated to this party, and at a time when it was physically impossible that Surratt could have assisted in the execution of it even if he had known it. Finally, upon this point, they have proved clearly that after the abandonment of the original plan Surratt left the United States, had no communication with the co-conspirators, and was on his way to learn what the new plan was, according to their proof. Now, you are to find that his intent combined with the intent of the conspirators who did the assassination, or he is no co-conspirator.

I say further, that it is to my mind perfectly clear that the Government knew all this before this indictment was found. I have done with the defense of Surratt. I ask your indulgence for a short time upon one or two points of the case. I say that, from the evidence in this cause, it is clear to my mind that the Government knew these substantial facts before this indictment was found. And if this evidence now be-

fore you, then in their possession, had been laid before the Grand Jury, instead of that miserable reptile, Weichmann, with his written statement, you would never have been troubled with the trial of this case. It is not within the range of my privilege to state to you what has been communicated to me by William P. Wood, chief detective of the Treasury Department upon this subject. But after this case is over you may have an opportunity of knowing what this statement is. Independent of any revelations of William P. Wood, made to me on the public streets and in the presence of three or four others, the proof is clear that the Government knew the scheme to abduct had existed, and had been abandoned. They knew it had existed prior to the 16th of March, because the trial of the conspirators had possessed them of that knowledge. They knew there was no overt act, no meeting of the conspirators, no step taken by the conspirators after the 16th of March to renew that original plan. They knew, for the evidence was there, that on the 24th or 25th of March, whichever it was, Surratt left here for Richmond; for they traced him to Richmond. They traced him back to this city on the night of the 3rd of April; they knew that on the night of the 3rd of April he saw nobody out of his mother's house, unless it was that arch-traitor, Weichmann. They knew that he went from here that night or early next morning so as to reach Canada on the 6th of April. That was all in proof. They knew that he left Canada for Elmira on the 12th of April, and was there on the 13th and 14th of April. And I would like to know what has become of the register of that Brainard House in Elmira, where he stopped. It has been searched for over and over again by different people, as Field states, and we have raked the earth, and cannot find it. They knew, if they knew anything, that from Elmira he telegraphed to Booth at New York. They knew it as well as they know it now. They knew that Booth had written from New York to Canada as well as they know it now, and that it was responsive to Booth's letter that he came to Elmira, as well as they know it now; it is all untrue. But

true or not, they rely on it, and they knew it as well before this indictment was found as they do now. They knew that he returned to Canada on the 18th of April, and remained there until the 17th September following, when he went to Europe, and never was here again until he was brought here in chains. But with this knowledge, with this complete vindication, with what the public never saw, what the Grand Jury never saw, what that military commission never saw—Booth's diary—buried in the vaults of the Government, secreted from all eyes, kept away from Congress and every one else, they recalled, in the fall of 1865, the reward they had offered for his apprehension. They knew his innocence and they recalled the reward which they had offered for his apprehension, and they have taken the trouble to prove it. Well, he is caught. He is caught in Egypt, and he is brought here. Public justice demanded an investigation. I agree; and he ought to have been put upon his trial. I agree. Every facility should have been afforded for his defense. A great and magnanimous country should have helped to ascertain the truth; and when the truth was developed, when it stood in capital letters so large that he who runs may read—aye, in letters of light, so that it may be read in the darkest night, "Not guilty upon the evidence of the prosecution"—they should have abandoned it. God save the country, when, with the clearest proof of the innocence of a man, he should be prosecuted for his life to gratify, not public justice, but something else—no matter what.

There is a leaf in our public history which deserves to be read, and read carefully. In October or November, 1865, the reward offered for this young man's head by the Government of the United States was withdrawn. In the political campaigns of that year public attention was called to the trial, conviction and execution of his mother. A strong voice—a voice for the people—a voice that made itself heard throughout the confines of this country, in the Halls of Congress, pronounced it a judicial murder. He charged distinctly that it was brought about by the suppression of proofs. The

political effect of that proceeding was beginning to be felt. A miserable wretch, who had received hospitality at the hands of Surratt and his mother in other days, sought after him and betrayed him. He had less than the honesty of the Arab. He had eaten salt at his mother's table. Betrayed, seized, imprisoned, he is brought to this country. The Government know they cannot convict him; but those men who have been assailed in Congress believe they may receive a vindication of their conduct at the hands of a jury.

For four weeks—for more than four weeks—have we been trying Mrs. Surratt. More than four weeks ago the innocence of this young man was complete; but it did not answer the purposes of this prosecution. The Supreme Court has decided, as was most eloquently said by my excellent associate yesterday, that the tribunal by which Mrs. Surratt was condemned and executed was an illegal, unconstitutional tribunal, without authority. Politicians and lawyers have denounced her execution as a murder, and based on insufficient proof. It was necessary for the protection of the actors in that portion of this drama to make some new move to satisfy the public mind; and it was equally necessary that the sacrifice should not escape from the horns of the altar. They bound him with chains, the counsel says. I say they were forged chains. They bound him with chains of iron. I say they were false links which united them together. They say it was no magic chain, but one which cannot be broken, connecting him with the crime and the past. I say it was a chain fabricated—colored as iron, fabricated of earth, covered over with the gloss of eloquence, polished by ingenuity; but frail, which breaks at the touch. The gentleman says that their evidence is complete, connecting him with the past. The District Attorney says that you are to weigh that evidence. Why, if it were not beneath the dignity of this occasion—and yet I do not know that it is, for it has almost become farcical—I would go to the historian of the city of our brother counsel from New York, and would refer him to the celebrated case in Knickerbocker's history of Wouter Von Twiller,

the judge who, when two men had a controversy about their accounts, and one produced his book, a small book in which the accounts were legibly written, and the other produced as an offset a much larger book, took the two books in his hands and said, "I am to decide by de weight of de evidence! dis book is much pigger and heavier dan dat book." The counsel for the prosecution here tells you he has thirteen witnesses, and that the weight of evidence is to control. Gentlemen, suppose you were to have four pounds of pure gold in one scale and thirteen of false, base metal in the other scale; it would be a much better comparison. We have given you the pure metal; it has a clear ring. We give you Cass, Stewart, Carroll. They ring like a morning carol; they gladden the heart of this young man. They ring cheerfully, joyfully, triumphantly; they ring victory—not guilty. What are these poor, leaden things that weigh so much more? Can you get a sound out of them? It is a dead sound. Gentlemen, you are to take the witnesses on the two sides, and weigh them according to their value in the scales of truth. It was very boastfully said in the opening of this case that they would vindicate the conduct of the law officers of the Government engaged in the conspiracy trials; that they would produce Booth's diary; they would show that the judgment of the court was submitted to the cabinet and fully approved; that no recommendation for mercy for Mrs. Surratt, that no petition for pardon to the Government had been rejected. As the trial progressed it became painfully clear that it was not John Surratt alone who was upon his trial. Despairing of success in regard to the son, they began to bestow their time upon the mother. To that I shall briefly ask your attention. It is connected with the case of the son.

Now, gentlemen, let us see who was Mrs. Mary E. Surratt. I believe no tongue has spoken of her except in her praise, unless it be Louis J. Weichmann and John M. Lloyd. Not only happy in her temper and disposition, and in the pursuit of those religious duties which were preparing her for the training of her children and for the future life here and

hereafter, but evidently happy in her associations. Look at the witnesses who appeared before you upon that stand—Mrs. Holahan, that child of nature little Miss Fitzpatrick, and Miss Lee Jenkins. No breath of suspicion ever passed across her brow or her path; no taint of failure in any of the relations of life touched her, so far as we know; and, except from the mouths of these two men, she walked peerless and without reproach. That she was lovable is shown by the testimony in this case; that she was loving is most true. She receives under her roof, shortly after her arrival in the city, a young man who is introduced by her son as an old college mate. She receives him as the friend of her son; she treats him as a son. In sickness she nurses him, in health she waits upon him. She pours out to him the tenderness of a mother; she admits him to all the freedom of the family as though he were a son. Two brief months pass, and a stranger is introduced into that family, gifted in a most eminent degree, fascinating in his manner, attractive in his appearance; and this leads me to say a word about his hand, by the way which Mrs. Hudspeth identified because of its beauty? It was his deformity, the only deformity about his person. This man is introduced either by the son or by his friend whom she is treating as a son, and his intimacy grows as his influence increases over not only the son, but the mother and the young girls in the house. It was natural; it should be so—most natural. Two short months more pass, and this gentleman is a frequent visitor at her house, and a man comes there, introduced by Weichmann. He has told three stories about it. The man is brought by him into Mrs. Surratt's parlor, and is introduced to her as Mr. Wood. He tells you that man came to the door and asked for Mr. Surratt; he was not at home. He then asked for Mrs. Surratt. Could he see her? "Yes, what is your name? I will introduce you." He walks in and introduces him. That man stays one night, and, according to Weichmann's story, is fed by him, supper provided by him. He leaves the next day, and again, in about two weeks, re-

turns. Up to this time Herold has never been in the house; Atzerodt frequently there, and is treated as a simple body, called by a nickname, and is made a sort of butt in the house. Booth is there, according to his story, almost every day; yet he swears to you he never saw Booth in the house with Atzerodt. He distinctly and positively swears to it. He tells you that the introduction of Booth was some time in the latter part of 1864 or beginning of 1865; that he and Surratt were both introduced to Booth by Dr. Mudd at the same time, on Seventh street. He swore before the military commission, within six weeks after the death of the President, that that was about the 15th of January, 1865. He admits he swore so. He says he fixed that date by the date of a letter which he received about that time. Now he fixes it by another incident, which incident is equally untrue; for he says now it was just after Surratt left Adams Express; and in another part of his testimony he says it was just after he went to Adams Express, and in still another part of his testimony he says it was fixed by proof on the other trial that Dr. Mudd came to Washington on the 22nd of December and left just after Christmas, and it was while he was there.

Booth visits there frequently. This man, treated as a son, trusted with the range of the house, confided in by all, sleeping in the same bed with John Surratt, drinking the same whisky with Howell, wearing the same clothes with Atzerodt in the day, out at night with him, knows just as well all that is going on in the house among these men as any other human being. They could not, if they would, have concealed it from him. He is too prying—too inquisitive; he is too thirsty after knowledge. He associates with all these people; and he, a clerk in a branch of the War Department, converses with Howell, a blockade-runner, well knowing him to be a blockade-runner, and talks with him about the number of prisoners, the knowledge of which he obtained in the Department to which he belongs; and yet he never communicated, never admits communicating, any information! But he takes from Howell a cipher, which he swears he never used! Did he know

what was going on? Was he a party or not? Can you separate them? Can you put him to sleep while the others are rioting upstairs? Did he not go up into the room where, according to his story, Surratt and Payne were playing with bowie-knives, etc., and did they stop? As soon as they saw who it was they went on with their game; though when they heard him coming they were going to stop! Did he not know what was going on? Oh no! they threw dust in his eyes.

I tell you, gentlemen, that man, with that cipher in his possession; with that knowledge of the condition of the prisoners; with that intimacy with Howell, the blockade runner; with that intimacy with all the parties engaged in this conspiracy, knew every thing as well as they did. He need not deny it. It is written in broad letters upon his face. There is the advantage again of an oral examination of a witness. You saw him upon the stand. I do not want to describe him; you all looked at him; you all felt as your eyes fell upon him he quivered, he tried to cover himself, as it were, with a garment to prevent your penetrating into his inmost heart and seeing what was lying there.

Well, a brief month passes, and there is a change in this scene. In the meantime there are extraordinary incidents. A new actor is introduced, Mr. John M. Lloyd. Mr. John M. Lloyd tells us—you—that early in March (and I call your attention to it on Surratt's account), Surratt, Herold, and Atzerodt left at his house some arms—carbines; Surratt told him where to conceal them. Did not Lloyd know more than that? We shall see by-and-by.

Time passes on again, and Mrs. Surratt is called to Surrattsville on business, and on her way there on the 11th of April she meets Lloyd near the Eastern-Branch bridge. He gets out of his buggy to talk with her. Lloyd tells you that in the presence and hearing of this man Weichmann—for he could have heard if he had listened; and Weichmann looked right at him as they began to talk—Mrs. Surratt told him to have those arms ready, that they would be wanted in

a few days. Weichmann tells you that what was said was said in a low tone, which he did not hear. On the trial of the conspirators he swore that it was in a whisper, and admits that when in conversation about it afterwards Lloyd reproached him for having said it was in a whisper; and Lloyd said it was in a tone loud enough to be heard. Is it true? One of these two men—and here begins the conflict between them—lies; that is it; there is no other word for it. I tell you that Mrs. Surratt knew no more about those arms being in that house than you did; and I will show you by-and-by, I think, that Lloyd was as deep in that scheme of abduction, or whatever it was, as Weichmann and Booth and Herold and Atzerodt.

Time passes on again. A few days more, and on the 14th of April this lady is summoned again to Surrattsville on a matter of business, as is proved by the letter of Mr. Calvert, not offered in evidence, but spoken of by the witnesses, and by what passed after she reached Surrattsville. Now, what says Weichmann. Up to this time not a word disloyal—that is the term now-a-days—has been uttered by Mrs. Surratt within Weichmann's hearing; he has seen nothing wrong about her. He drives her to Surrattsville and he does not see John M. Lloyd there. He does not see him arrive; he does not see him until he goes into the house. In the meantime Weichmann drives up and down the road, and remains there until Mrs. Surratt is ready to come away before he sees Lloyd. Lloyd tells you Mrs. Surratt was about to go away as he got there; he drove into the yard, and she gave him a parcel which she carried out in the buggy, and then asked him to mend the buggy. Weichmann tells you he came out with a piece of rope, and that he got in behind the horses to tie up the broken spring.

Now, let us look back a step or two. Between two and three o'clock Weichmann and Mrs. Surratt started to go out to Surrattsville. He had been after the buggy and got it; he saw Booth, and shook hands with him when he got the buggy. When he came back she was about to get in

when she said, "Stop, let me go back and get those things of Mr. Booth's." She brought down and put into the buggy something wrapped up in paper, about five or six inches in diameter, which she said was brittle, glass; that he carried it safely to Surrattsville. This is what Weichmann says. Lloyd tells you that the paper parcel she gave him was a fieldglass, which has been exhibited to you here as having come by that means into Booth's possession.

Weichmann admits that on the trial before the military commission he did not say that she said, "Wait till I can get Mr. Booth's things;" he said that she did not mention Booth's name before they started in the buggy; that the parcel she put in the buggy he handled, and thought it was a half dozen saucers. He now comes and tells you a directly opposite tale; that she told him to wait until she could get Booth's things, and that she brought down a fieldglass—not a half dozen saucers. He could not have been mistaken about that. Now, when it suits his convenience to fit a case to meet John Lloyd's fieldglass he converts half a dozen saucers for John Lloyd into a fieldglass belonging to Wilkes Booth.

But that is not all. This poor creature Lloyd, himself thoroughly entangled in this conspiracy, tells you that when he got home from Marlboro that day he was drunk—quite drunk; that he went into the house after receiving this fieldglass from Mrs. Surratt, laid down, and was taken sick before she came to him to get him to mend the buggy. Neither of them tells the truth. We put upon the stand another witness, wholly indifferent as between them—Bennett Gwynn—who tells you what part of the buggy was broken, how he directed it to be repaired, and that he sent in for Nothey to come out and tie it; whether he did or not, he did not know; but he did not see John M. Lloyd there at all. John Lloyd tells you he was very drunk that night; but the next morning, when he was met by detectives in pursuit of Booth, they tell you he was quite sober. Clarvoe knew him well. He told Clarvoe that he had been up all night, and

he took upon his soul an obligation as strong before God as the oath administered upon this stand that he had not seen Booth or Herold. It is not the legal obligation of an oath that binds a man. It subjects him to punishment for perjury; that is a mere temporary view of it. It is the obligation that binds him to his God, and makes him responsible there, not here; and he who takes that name with a solemn pledge of his truth is just as much a perjured liar and villain, if it be not true, as if he had sworn it upon the stand, under the sanctions of the law. When these detectives meet him, he takes the most solemn form of obligation which he can impose upon his soul that Booth and Herold had not been there that night, and he knew nothing about it. He comes to you, and tells you, with no higher obligation upon him, that these men had been to his house that night, and that he had given them this fieldglass, whisky, and carbine; and you are to believe him now, and connect Mrs. Surratt with that transaction, upon the oath of this miserable, drunken, perjured wretch. Without it she sleeps in an innocent grave; she sleeps the sleep of the just; she sleeps in the arms of her Saviour, passed beyond the influence of mortal control. If that man lied then before that commission, he lies now. Strike out his testimony, and she walks disenthralled, if she were embodied, free, without stain or blemish in this connection. Did John Lloyd tell the truth? I shall have something more to say about Mr. Weichmann. I dismiss Mr. John M. Lloyd now and forever. I think you will find by the reflex testimony of Weichmann himself that this view of the testimony of Lloyd is fully corroborated.

I now come back to Mr. Weichmann. There is not in the whole range of his testimony one single material, and scarcely an immaterial, fact which passed in the presence or observation of another, and to which contradiction was allowable by the rules of law, where we have not flatly contradicted him. There must be some truth in his statement. He must have the stem of truth on which to weave the falsehood. The warp is truth, but the false woof he has interpo-

lated in this case, to the destruction of her to whom he owes everything but a son's gratitude. First, let me show you how false he has been to human nature—false to the woman who nursed him in sickness; who attended him in health; who made his life comfortable and enjoyable; who trusted him as a son, and who, he says, treated him as such. Was he false, is the question. Now, let us look back and see whether he was false or not, and by his own admission trace him step by step in his course. Let us begin further back. He comes to you to tell you that he accepted a situation at St. Matthew's institute, in this city. That is to make a favorable impression; but when he is cross-examined he tells you that he besought and begged the situation, and was glad to get it. To accept a situation implies that it was tendered to him. To beg for it, is not to accept it. He accepted a situation at St. Matthew's, and he says in his cross-examination, "I sought it, and was glad to get it; I do not deny that." He says further, "Mrs. Surratt treated me kindly; she nursed me and attended me when sick." This gentleman has the most remarkable memory of dates and events that ever was seen, and he gives some of the most remarkable reasons for recollecting. He says on the night of the 13th of March he was at Mrs. Surratt's when Payne came in. "I fix the time Payne came because it was two evenings before the 15th March, when 'Jane Shore' was played." Now, on the trial before the commission he fixed the play of "Jane Shore" on a totally different night. On the 18th March he says, "I was out; we went to see the 'Apostate' played by Booth and John McCullough." On the trial of the conspirators, he swore it was on the 26th March. "On the trial of the conspirators I said it was on the 26th; I now say it was on the 18th." How does he make that correction? He says, "I said then that I was introduced to John McCullough on the 2nd of April, but it was not true." This is on page 412. He says, "I saw John McCullough's affidavit, stating he was not here at that date; but I changed the date before I saw it in my own mind." Now, when was

he introduced to Dr. Mudd, and by Dr. Mudd to Booth? "I was introduced to Dr. Mudd in the winter of 1864-5, when Booth had room 84. I did state before the commission that I could fix it by the Pennsylvania-House register. I did say it was about the 15th of January, to the best of my recollection. I now say it was in the winter of 1864-5, and I could fix it positively by the time Booth occupied room 84. I fix it now by the fact that John Surratt was employed at Adams Express Company a short time after this introduction. This has occurred to me within the last two years. I have been to see when he was employed at Adams Express, and learned that it was on the 31st December. I must have been introduced before that time; and yet I did swear on the conspiracy trial that it was on the 15th of January."

The question is pressed upon him at what time he was introduced to Dr. Mudd. He evades it; but at last he says he knows that proof was given on the trial of the conspirators that Dr. Mudd was not here at the time fixed by him, but was here on the 22nd of December, and he knows also by the fact that Surratt did not go to Port Tobacco until after that introduction. He says, on page 416, "I have thought over this matter for two years." He says, on page 416, "I do not recollect when on my way to prison whether John M. Lloyd asked me, or I asked him, in what tone of voice Mrs. Surratt spoke when we met. I told him I testified she spoke in a whisper. He expressed astonishment."

Here, then, are these strange, irreconcilable contradictions from a witness who comes here to take away the life of the son, after he has succeeded in taking away the life of the mother. Again, as to his times, dates, and memory, I refer to page 417: "Surratt went to New York and saw Booth early in February, 1865. I remember it was while Howell was in the house, but I cannot fix it within ten days. A lady came back with him; he did not tell me he went to bring her. He told some days after he got back that he saw Booth. He was absent about two days and one night." He says: "I did not keep the days, hours, and minutes of

everything." He says that John Surratt told him he went after that lady. He says that while he was a clerk in the Commissary General of Prisoners' office he made several approximate estimates of the number of prisoners, but never furnished the information even to Father Roccofort, but talked on the subject with Howell, who, as he knew, was a blockade-runner. He says: "After I left the stand before the recess I did go to counsel to ask me other questions. I did not suggest the questions, but they asked me about what I had called their attention to." On page 426 he says: "I met Payne on two occasions at Mrs. Surratt's. I cannot fix the dates. I think it was in the latter part of February, 1865. I said before the military commission that I told him I would introduce him to the family if he desired it." Finally, after evading my question as long as possible, he answers: "Yes, I did introduce him." He says, on page 431: "To the best of my knowledge, I never loaned my cloak to Atzerodt. Atzerodt once put on my hat, and we had a laugh about it. It came down over his eyes; but that was all."

I need not recall to your attention the contradiction of all this testimony as to Payne and as to Atzerodt by Mrs. Holahan, Miss Fitzpatrick, and Miss Jenkins. They tell you that Payne or Wood never was known to any one of that family by any other name but Wood; they never heard the name Payne until after their arrest; yet this man swears that he introduced him on the second occasion as Mr. Payne, and they referred to his former visit as Wood, and recollected him as the same man, and spoke to him as Wood, though he was introduced now as Payne. Again, each one of them testifies to the fact of his exchanging clothes with Atzerodt, not once, not twice, but over and over again; seeing him at different times with different articles of dress belonging to Atzerodt. He swears he never lent him his cloak, and he put on his hat once, but on no other occasion, and adds, "I am willing to state everything." Again, he swears that Payne left on the 16th, after that extraordinary exhibition in his room with John Surratt; that five or six

days after that, while passing by the post office with Surratt, Surratt went into the post office and received a letter addressed to "Sturdy," opened it, and it turned out to be a letter from Wood; that Surratt told him it was a letter from Wood. Now observe, he says that was five or six days after this. He said on the conspiracy trial that that letter was received fourteen days after Payne came to Mrs. Surratt's. He knows Payne came on the 13th, because "Jane Shore" was played on the 15th, and Payne went on the 16th; and yet he swears that Payne was there but two days. On the conspiracy trial he swore that that letter was taken out of the post office fourteen days afterwards; here he swears it was five or six days afterwards; Payne returned on the 27th of March, as he understood by an interview Surratt had with Mrs. Murray; and he recollects that the date of the receipt of the letter was before the 27th of March. Let me read from his testimony:

"On the trial of the conspirators did you or not state that that letter was received some two weeks after the incident of the fencing with the bowie-knives?" "Yes; and I fixed the 20th of March."

"Did you not say, 'Some two weeks after Surratt, when passing the postoffice, went to the postoffice, and inquired for a letter that was sent to him under the name of James Sturdy, and I asked him why a letter was sent to him under a false name, and he said he had particular reasons for it?' What day was that? It must have been about two weeks after that affair. It must have been before the 20th of March. The letter was signed Wood."

"Now, if that fencing took place on the 15th of March, how could you make out that it was two weeks afterwards?" "I was mistaken in the time at first, but I fixed the time, and I fixed the time of the horseback ride in front of Mrs. Surratt's house the 20th of March. I think you will find I fixed it at that date." "In regard to that horseback ride, did you state on the other trial, 'I will state that, as near as I can recollect, it was after the 4th of March; it was the second time that Payne visited the house; I returned from my office one day at half-past four o'clock,' etc." "Yes, sir." "Then you gave an account of these parties coming to your room, and state, 'Some two weeks after Surratt went to the postoffice and got a letter addressed to James Sturdy;' did you state that?" "Yes, I afterwards fixed the date of that horseback ride, in answer to the question of Mr. Cox, on the 20th of March." "You have examined carefully the testimony that you gave down there?" "I have studied over it for the last two years. You do not suppose

that such an incident as that is an every day incident in my life, and that I have not been thinking of it."

I will not take up your time by reading what he said about his testimony before the grand jury. He swore that there was no statement of his before the grand jury. He says he first met Atzerodt in the latter part of January, 1865, about three or four weeks after his introduction to Booth, and several days after Surratt got back from Port Tobacco; that he was very frequently at the house, and that Surratt introduced him, as he did every one of the party. He says "on the 2nd of April, I met him there." Surratt was not there on the 2nd of April; Surratt was on his way from Richmond here, as you all know. He says: "I never saw him there when Booth was present. He was there, it may have been ten or fifteen times. Booth was there every day he was in the city." Now, gentlemen, most of you, perhaps all, recollect Mr. Barry, who was examined as a witness on the stand. He tells you that he brought back the horses which Surratt took to Port Tobacco; that he found Booth and Atzerodt at Mrs. Surratt's house, and spent a portion of the evening with them there, and that Weichmann was one of the party. Weichmann swears to you that Dr. Wyvil brought back those horses, and he gives you a circumstantial account of it. Dr. Wyvil swears that he never was at Mrs. Surratt's house. Mr. Barry swears that he himself brought them back.

The gentlemen on the other side will tell you that these are immaterial circumstances. Aye, but when you pile up grain after grain, day after day, incident after incident, you make the mountain. It is the last grain that breaks the camel's back. We all know that. So it is with these little, apparently trifling particulars. Let a man set out minutely to tell times and dates in order to involve people in inextricable difficulties, and you trace him back and find him contradicted step by step in what appear to be rather immaterial points, depend upon it he has been weaving a web and not recollecting what has passed.

Again—it is not very important, to be sure—he swears that at the conspiracy trial he did not say that Mrs. Slater wore a mask; yet he did swear it, and the passage was read to him. He says at page 376 that Payne came to Mrs. Surratt's the first time in the latter part of February, 1865, while in his cross-examination (page 411) he says Payne came on the 13th of March. He says here that he never was under arrest. I read to him his response on the other trial, that he was put in charge of an officer by McDevitt and was never out of his custody. He swears that he was appointed a special officer by the War Department to go to Canada. You know that that order was procured by McDevitt in order to enable him to obtain transportation, and that McDevitt had him all the time in custody. He says on page 444: "I remember better now than I did two years ago, for I had been in prison then, and was suffering from excitement and nervousness." He says, "My memory is more distinct now than it was then." He was asked whether he had read the report of that trial, and he admits that he had studied it and read it a day or two before he gave his testimony here. He says on page 449—and now we are coming to the keys that unlock the mystery of this new version of his intimacy with these parties—"I may have said, that during that trial my character was at stake, and in this trial I intended to do all I could to aid the prosecution." His character was at stake, and he intends in this trial to do all he can to aid the prosecution!

He tells an extraordinary story of a remark made by Mrs. Surratt on the night of the 14th of April, as she approached the city after the visit to Surrattsville. He says that, as they reached the elevation overlooking the city, she said that she was afraid all this joy would be turned into sorrow. He is asked if he said that before the military commission, and replied that he did not; but he recollects now better than he did two years ago. He says he testified before the commission in May, 1865; but he did not state then and now recollects what would have been then most impor-

JOHN H. SURREATT.

tant proof for the Government. He says he did not then state the remark made by Anna Surratt on the night the officers came there, referring to Booth having been there only an hour before, because the facts were not as clear then in his mind as now. Now he intends to do all he can for the prosecution :

"You say Mrs. Surratt asked you to pray for her intentions on the 14th of April? Have you stated this matter before to anybody?" "I have written it all down here within the last five or six months. I prepared a statement for the Prosecuting Attorney." "Do you recollect whether, when you first wrote it down, you did not write that this exclamation of hers, or application to pray for her intentions, was after she had made that remark in reply to her daughter?" "I am positive I never wrote that down as happening after the assassination. She asked me to pray for her intentions before the assassination." "Didn't you tell us, on your examination here the other day, that she was walking up and down the room, with beads in her hands, and very nervous and excited, when she asked you to pray for her intentions, after the detectives had gone away?" "No, sir." "Have you not, in a verbal or a written statement, or both, said that after the detectives had gone away, and after the remark of Miss Anna Surratt and the reply of her mother she, Mrs. Surratt, while walking up and down the room with beads in her hands, and in a state of agitation, asked you to pray for her intentions, to which you replied, 'I do not know what your intentions are, and I cannot pray for them;' when she answered, 'Pray for them anyhow?'" "I am positive all that occurred before the assassination."

Now, let us look at that scene one moment without calling the witnesses. Let us see where we are. Mrs. Surratt had been to Surrattsville, and was very pleasant and cheerful all the way there and all the way back. According to the theory of the prosecution she then knew that that night her son—we may say her only son, for Isaac was in Texas—was to embark in this desperate, terrible, damnable crime, with other parties, the massacre of the President and his Cabinet. She was cheerful and pleasant all the way to Surrattsville and back. When she came back they had their supper. She was still cheerful and pleasant, although she saw looming in the distance a halter for herself and her son, if they were parties to this conspiracy. They are going to

make her more than human; they are going to make her diabolical; aye, and the district attorney has denounced her as diabolical. Yet she was cheerful and pleasant; not a ripple disturbed the placidity of that evening; they were at supper cheerful, animated. After supper, her friend and boarder, Mrs. Holahan—and every man who saw that lady on the stand knew that if she was not a guardian angel she brought with her the virtues of truth, purity, and consistency—reminded her that she had engaged to go to church with her, and they started to go to church. It must then have been sometime after nine o'clock. They walked about a square, when Mrs. Holahan proposed to return, because of the condition of the night and the movements of the torch-light procession and the crowds in the streets to see it. They returned, and Mrs. Surratt went cheerfully into her parlor. And yet she was then, according to this theory, not only herself brooding over this horrible massacre, but the fate of that dear son was locked up in it. This wicked man Weichmann knew that it would never do to represent that woman thus self-possessed, thus enjoying the evening, thus animated, thus cheerful, thus on the brink of the very threshold of that church which leads her above or consigns her to everlasting, not temporary, death. She goes back; and he, the serpent, the man who had wormed himself into her confidence, the man whom she had trusted as a son, the man with whom her beloved son slept, the man who was like a son to her, that man invents a false and delusive story of her nervous agitation and excitement. It is not true. You know it is not true, or Honora Fitzpatrick speaks false; Lee Jenkins speaks false; Mrs. Holahan tells not the truth, and yet she is the impersonation of truth. If she was not thus crushed, nervous, and excited, walking up and down the room, counting her beads, she never would have called upon that man to pray for her intentions, and it is a willful, deliberate, fabricated lie. No such thing occurred; no such thing could have occurred. It is against all womanly nature. If she had no regard for herself, yet stand-

ing and looking at the leap that her son was about to take, according to the theory of the prosecution—leaping into eternity through a dastard's, coward's, and villain's grave—she could not have been cheerful; she could not have enjoyed the evening; she dared not approach the portals of her church; she dared not ask any one to pray for her intentions. Do you believe it? It is against womanly nature; it is against a mother's instinct. It is against all the feelings of nature from the birth of Eve until this day, which makes the mother hover over her son, cherish him, provide for him, sacrifice herself for him—not lead him to destruction. It is utterly impossible for her to be calm as he is about to take the fatal leap.

Again, what do we hear the next morning? And here let me say a word to the district attorney. I bore with some degree of patience the assault made by him upon this defenseless prisoner; but this wretch—that is the proper name for him; I have a right to speak of him; he is not a prisoner; he has free arms, and I am a man—this man Weichmann tells this jury that next morning, at the breakfast-table, he told the company there assembled that he intended to go to a justice, or wherever it was necessary, and make an exposure of all that he knew of this transaction, this conspiracy, without mentioning the name of John Surratt; and—deep, damning, shameless falsehood, which ought to have blistered his tongue, and which should carry his name as long as language can carry it down to infamy—that that poor stricken girl—not here upon trial, not here to defend herself, not a party to this conspiracy—that she disgraced and debased herself by saying that the death of Lincoln was no more than that of a nigger in the Yankee army. And the district attorney relies upon that infamous wretch's story! Do you believe she said it? And if she said it, in the excitement of that moment, what manly heart would repeat it to her prejudice? What man having the instincts of nature about him, a father or a brother, would, in order to increase the prejudice against this young man, to bring him to the

scaffold, utter such a story against a pure and good girl? I say—I will not say it of the present district attorney—but I say that if I could do such a thing, I should ask every pure and virtuous woman as she passed me to turn her skirts aside lest she should be contaminated by the touch. What! not satisfied with calling a defenseless man a coward, an assassin, a traitor, but still further to inflame the passions of the jury against him, to put upon the stand that heart-stricken girl—wasted, worn, broken down—now trembling in ecstasy of doubt as to the fate of that brother, to have printed in the newspapers, to go into her hands, and the hands of everybody else, such an allegation as this—I say as long as I stand at this bar, or any bar—I was going to say, I believe, at the bar of my God—I would make a protest against it.

But, again; you all recollect that man's testimony about distinctly hearing footsteps of a man ascending the steps, and Mrs. Surratt going to the door and opening it, and leading the man to the parlor, and he himself waiting down stairs until the man went out and she came back; and he told you of a remark made by Anna Surratt that evening in reference to that man when they were talking of Booth. We stamped the lie at once when we put upon the stand Honora Fitzpatrick and Lee Jenkins, both at the table with him, both with equally clear preceptions, both swearing that it was a Mr. Scott who came up those steps to leave a parcel of papers for Lee Jenkins, and that Anna Surratt went to the door and received them. And yet I have seen men and women in this court house shaking hands and passing compliments with such a man as that!

“Shame, where is thy blush?
Virtue, where is thy shield?
Household innocency, where is thy protection?”

When men and women admit a wretch so base, a son turning against a mother, a brother turning against brother, a brother turning against sister, in order to wreak his vengeance upon the devoted head of this young man, for whose

prosecution he is to lend against him all his aid, because—that is his shameless confession—because for two years he has been persecuted for their sake. Manhood! He is not a man; he is a dog. No man could do it.

One word more, and I have done. I have exhausted your patience and my strength. If I had laid it and could follow the field open to me here, I should have wearied you still more; but I have not strength to do so, nor you patience, and besides the case is exhausted. I have a few words to say and to read one other item of testimony, to show you that Mrs. Mary E. Surratt was not guilty; that the proof against her then was not sufficient to have hung a dog; that the proof against her now is rotten to the core. No honest man should cherish it. This man Weichmann tells you that he knows Louis Carland. Who is he? He was costumer at Ford's theater. It is not attempted to impeach him. I would like to know anybody who says he can impeach Louis Carland, or who says that Louis Carland has any interest in this case except his sense of justice. Does anybody say that he has any pecuniary interest, any of blood? Is there a man to be found who will say he would not tell the truth? I dare say there is; the Government can find them, I have no doubt; they found them to say so about Cameron. But who impeaches Carland? Nobody. Nobody has sought to do it. I challenge an impeachment of him. This poor creature Weichmann is asked whether or not he had a conference with Carland after he gave his testimony before the military commission, and what he said on that subject. He denies it all. Mr. Carland says:

"He wished me to go with him to St. Aloysius' Church, as he said he wished to make a confession; that his mind was so burdened with what he had done that he had no peace."

Does my learned brother mean that that is the sort of confession he requires from the prisoner at the bar? I have been taught, confession not to man—confession unto God. A new doctrine in the Presbyterian Church has been

preached here in this case. Confession is confession to God, who looks into the heart and can see whether that confession is pure or adulterated with the hope of gain. Confession to man out of the Roman Catholic Church can receive no sanction from the minister of religion except for advice and help. I continue Carland's testimony :

"He said he was going to confession to relieve his conscience. I said 'that is not the right way, Mr. Weichmann; you had better go to a magistrate and make a statement under oath.'"

Weichmann swears he did not.

"He said, 'I would take that course if I were not afraid of being indicted for perjury.' He said if he had been let alone, and had been allowed to give his statement as he had wanted to, it would have been quite a different affair with Mrs. Surratt than it was. He said he had been obliged to swear to the statement that had been prepared for him, and that he was threatened with prosecution for perjury—threatened with being charged with one of the conspirators unless he did. He said that a detective had been put into Carroll prison with him, and that this man had written out a statement which he said he had made in his sleep; and that he had to swear to that statement. I asked him why he swore to it when he knew it was not true. He said part of it was true, but not all the points that he could have given, if he had been let alone, were contained in it. It was on account of that statement that he wanted to go to confession—to relieve his conscience?" "He told me that if it had not been for some gentlemen calling them back after they had started to Washington, Mrs. Surratt would not have seen Lloyd that day. He said further, that in turning round to go back the spring of the buggy was broken, and that then it was they met Lloyd."

Weichmann swears it is not so; but, if it be true, how does this convict, Weichmann, stand before you? If it be true, he stands convicted of having told one story to the military commission and of having told you another story now, infinitely more aggravated than the story he told then, because he says he recollects it better now than he did then, and because he has determined to give all his influence to the prosecution, and because he seeks to be revenged on these people, who have persecuted him for two years; and this man you are asked to credit.

JOHN H. SURREATT.

I should have been very glad to have gone over several contradictions of this man's testimony by Mr. Holahan, Mrs. Holahan, and Miss Jenkins, but I cannot do it; I beg you to retain them in your memory. I wish you could have a printed copy of one of these reports, but I fear it is too long and would exhaust your patience. I should be glad you would take it anyhow, for I trust this case to the evidence. There is no lie about which you can have any difficulty where the evidence is so plain that he who runs may read innocence. And when the learned judge from New York shall have concluded his argument, and when the learned judge on the bench shall have summed up the case to you, I beg of you, if you have thought over this matter this long time, and while this discussion has been and shall be going on, not to leave that jury box, but to render at once a verdict of "Not guilty," that this young man may go forth to the world without a cloud of doubt resting upon him by long deliberation; and if you can, as I trust you can in your consciences, as you have a right to do, I beg you to prepare a paper stating that having heard this case thoroughly you were convinced of the innocency of the mother of the prisoner. I have done.

MR. PIERREPONT'S CLOSING SPEECH TO THE JURY.

August 3.

Mr. Pierrepont. May it please your Honor: Gentlemen of the jury, I have not in the progress of this long and tedious cause had the opportunity as yet of addressing to you one word. My time has now arrived.

"Yea, all that a man hath will he give for his life." When the Book of Job was written this was true, and it is just as true today. A man will give his property; he will give his liberty; he will sacrifice his good name; he will desert his father, his brother, his mother, his sister; he will lift his hand before Almighty God and swear that he is innocent of the crime; he will bring perjury upon his soul, giving all that

he hath in this world, being ready to take the chances and jump the life to come. And so far as counsel place themselves in the situation of their client, and just to the degree that they absorb his feeling, and his terror, and his purpose, just so far will counsel do the same.

I am well aware, gentlemen, of the difficulties under which I labor in addressing you. The other counsel have all told you that they know you and that you know them. They know you in social life. They know you in political affairs. They know your families, your sympathies, your habits, your modes of thought, your prejudices even. They know how to address you, and how to awaken your sympathies; while I come before you a total stranger. There is not a face in these seats that I ever beheld till this trial commenced; and yet I have a kind of feeling that we are not strangers. I feel as though we had a common origin, a common country, a common religion, and that, on many grounds, we must have a common sympathy. I feel as though hereafter, should I meet you in my native city or in a foreign land, I should meet you not as strangers, but as friends.

It was no pleasant thing for me to come into this case. It came to me at a time ill-suited in every respect. I had just taken my seat in the convention called for the purpose of forming a new government for my State, and I was a member of the judiciary committee. That convention is now sitting, and I am absent where I ought to be present. I felt, however, that I had no right to shirk this duty.

The counsel asked whether I represented the Attorney General in this case. They had, perhaps, the right to ask; and I give you the answer. There surely is no mystery about the matter. The District Attorney, feeling the magnitude of this cause, felt that he ought to apply to the Attorney General for assistance in the prosecution of this great case, and he accordingly made the application. I have known the Attorney General for more than twenty years. We have been on terms of most friendly relations, both socially and professionally.

The Attorney General conferred with the Secretary of State, who is, as you know, from my own State, and they determined to ask me to come into the cause; and on a letter from the Secretary of State I came to Washington, and there met him and the Attorney General. That is the way I came into the cause, and I am assured that there was no member of the Cabinet but those two who ever heard or knew of my retainer until after my arrival here.

I have simply tried to perform my duty as best I could. I have no doubt greatly failed. A trial protracted as this has been is indeed a trial. It is a trial to the court; it is a trial to you; it is a trial to counsel; it is a trial of health, thus long protracted in these hot days; it is a trial of patience; and it is a terrible trial to the temper. When the President of the United States was assassinated, I was one of a committee sent on by the citizens of New York to attend his funeral. When standing, as I did stand, in the east room, by the side of that bier, if some citizen sympathizing with the enemies of my country had, because my tears were falling in sorrow over the murder of the President, there insulted me, and I had repelled the insult with insult, I think my fellow-citizens would have said to me that they pronounced upon my act a condemnation; that I had no right in that solemn hour to let my petty passions or my personal resentments disturb the sanctity of the scene. To my mind the sanctity of this trial is far above the funeral, and I should forever deem myself disgraced if I should allow any passion of mine or personal resentment of any kind to bring me here into a petty quarrel over the murder of the President of the United States. I have tried to refrain from anything like that, and, God helping me, I shall so continue to the end.

To me, gentlemen, this prisoner at the bar is a pure abstraction. I have no feeling towards him whatever. I never saw him until I saw him in this room, and then it was under circumstances calculated only to awaken my sympathy. I never knew one of his kindred, and never expect to know one

of them. To me he is a stranger. Towards him I have no hostility. Towards him I shall not utter any word of vituperation. I have come to try one of the assassins of the President of the United States, as indicted before you. I leave personal considerations aside, and I hope I shall succeed in keeping them from this cause, so far as I am concerned. I believe, gentlemen, that what you wish to know in this case is the truth. I believe it is your honest desire to find out whether the accused was engaged in this plot to overthrow this Government and assassinate the President of the United States. My duty is to try to aid you in coming to a just conclusion. When this evidence is reviewed, and when it is honestly and fairly presented, when passions are laid aside, and when other people who have nothing to do with the trial are kept out of the case, you will discover that in the whole history of jurisprudence no murder was ever proved with the demonstration with which this is proven before you—the fact, the proofs, the circumstances all tending to one point, and all proving the case, not only beyond a reasonable, but beyond any doubt. I pledge you, gentlemen, that I will keep this promise to you. This has been, as I have already stated, a very long case. The evidence is scattered. It has come in link by link, and as we could not have the witnesses here in their order, when you might have seen it in its logical bearings, we were obliged to take it as it came; and now it becomes my duty to put it together and to show you what it is. I shall not attempt to convince you by bold assertions of my own. I fancy I could make them as loudly and as confidently as the counsel upon the other side; but I am not here for that purpose. The counsel are not witnesses in the cause. We have come here for the purpose of seeing whether under the law this man arraigned before you is proved to be guilty on this evidence. I do not think it proper that I should tell you what I think about everything that may arise in the case, or that I should tell you that I know that this thing is so and so, and that the other is another way. My business is to prove to you from this evidence that the prisoner is guilty. If I do

JOHN H. SURRETT.

that, I shall ask your verdict. If I do not do that, I shall neither expect nor hope for it.

I listened, gentlemen, to the two counsel who have addressed you for several days without one word of interruption. I listened to them respectfully and attentively. I know their earnestness, and I know the poetry that was brought into the case, and the passion that was attempted to be excited, and the ghosts that my learned brother Merrick brought before you trailing their calico dresses and making them rustle over these chairs. I have none of those powers, nor shall I attempt to invoke them. I have come to you for the purpose of proving that this party here accused was engaged in this conspiracy to overthrow this Government, which conspiracy resulted in the death of Abraham Lincoln, by a shot from a pistol in the hands of John Wilkes Booth. That is all there is to be proved in this case. I have not come here to prove that Mrs. Surratt was guilty or that she was innocent; and I do not understand why that subject was lugged into this case in the mode it was; nor do I understand why the counsel denounced that tribunal which tried her, and thus indirectly censured, with the severest condemnation, the President of the United States. The counsel certainly knew when they were talking about that tribunal, and when they were thus denouncing it, that President Johnson ordered with his own hand that commission; that President Johnson, President of the United States, signed the warrant that directed the execution; that President Johnson, President of the United States, when that record was brought before him, brought it before his cabinet, and that every single member voted upon it, and that they voted to confirm the sentence, and that the President, with his own hand, wrote his confirmation of it, and with his own hand signed the warrant. I hold in my hand the original record, the original paper, and no other man's name ordered it. No other one touched it. And when it was suggested by some of the members of the commission that in consequence of the age and sex of Mrs. Surratt it might be right to change her sentence to imprisonment

for life, he signed the warrant for her death with the paper right before his eyes—and there it is. (Throwing the paper on the table at which *Mr. Merrick* sat, who, however, did not touch it.) My friend can read it.

My friends on the other side have undertaken to try to array the Government of the United States against the prisoner, and have talked very loudly and eloquently about this great Government of twenty-five or thirty millions of people being engaged in trying to bring to conviction one poor young man, and have treated it as though it were some hostile act, as though two parties were litigants before you, the one trying to beat the other. Is it possible that it has come to this, that, in the city of Washington, when the President has been murdered, and when by the forms of law, before a court and a jury of twelve men, an investigation is made to ascertain whether the prisoner is guilty of this great crime, the Government are to be charged with seeking his blood, and its officers as “lapping their tongues in the blood of the innocent?” I quote the language exactly. It is a shocking thing to hear. What is the purpose of a government? What is the business of a government? According to the gentlemen’s notion, when a murder is committed it should not do anything about it; and if the Government undertake to investigate the matter, and to find out whether a man charged with the crime is guilty or not guilty, the Government and all connected with it are to be assailed as “bloodhounds of the law,” and seeking “to lap their tongues in the blood of the innocent.” Is that the business of Government, and is it the business of counsel under any circumstances thus to charge the Government? What is government for? It is instituted for your protection, for my protection, for the protection of us all. What could we do without it? Tell me, my learned and eloquent counselor on the other side, what would you do without a government? What would you do in this city? Suppose, for instance, a set of young men who choose to lead an idle life say to themselves that it is not right that some rich man living here should be enjoying his hoarded wealth, and they break

into his house at night and steal therefrom. My friend says, when you come to prosecute them for that robbery, "What! this great and generous Government of twenty-five or thirty millions of people pursue these poor young men, who merely tried to break into the house of one of you and steal his money! Should not this Government be generous and let them off? Oh, yes! they are let off." Well, a few days after they break into the house of my friend Merrick and they steal his money, and he, a brave man, undertaking to resist them, they strike him down in death. "Oh, generous Government! with from twenty-five to thirty millions of people, let the young men off. Why should a great and generous Government, with all its powers be pursuing the young men who thus murdered Mr. Merrick in their attempt at robbery? Why should the officers of the Government be lapping their tongues in the blood of the innocent?" Suppose this view as to the duty of a government were universally entertained, what would be the result? How long would your Government last? How long would you hold a dollar of property? How long would the safety of your daughters be secure? How long would the life of your sons who stand in resistance to lust and rapine be safe? I have never heard such shocking sentiments uttered in relation to the duty of government from any human lips, or from any writer on the face of the earth.

We have been told here that our Government has nothing of divinity that hedges it about; that it is only the government of kings which claims such divinity. The Bible tells us that all government is of God; that the powers that be are ordained of God; and I can tell you, gentlemen, if such are the sentiments of this country that there is no divinity and no power of God that hedges about this Government, its days are numbered, its condemnation is already written, and it will be in the dust before many years have rolled away. No government that is not of God will last; it will soon come to nought. No other government ever did long exist; no other government can exist. Every government which is a government of the people is of God, and "the powers that be are

ordained of God." When you come together at the polls, and you elect as the ruler of this great nation a President, and thus by the sanction of your votes he is made so, the voice of the people is indeed the voice of God, and the government which is thus instituted is ordained of God, and it is as much hedged about as that of any king that ever reigned on England's throne. Is it possible that our countrymen will say that the Government which we thus have made, which our fathers established, and which we are thus cherishing, has nothing of divinity to hedge it about? Does it rest alone and merely upon human whim, without anything sacred in it, and without any protection of the Almighty over it? If so, let me repeat, its days are numbered; it will soon pass away. Once there was an empire of Rome. It was an empire which was in its day the greatest that the human mind had ever reared; but it did not believe, or rather ceased to believe, that there was a God who ruled: and that government was of God; and they ceased to punish great crimes, to punish treason, to punish rapine, and to punish murders; and it happened in a very short time after they ceased to inflict punishment for such crimes and ceased to exercise the powers which belonged to government, that the Roman empire tumbled to its ruin. It was trampled down by the barbarian, and not a son of a Caesar lives on the face of the earth, and not a descendant of a Roman matron exists anywhere in this wide universe. The empire perished, and crumbled into dust, and nothing but its ashes remain. It will ever be so whenever a people cease to obey God, and whenever they cease to think that government is of God. Let us see what the Bible says on this subject; what views were entertained in the Old Testament, and what in the New.*

Such was the order in the times of this Book. And:

"Wo unto the world because of offenses, for it must needs be that offenses come; but wo to that man by whom the offense cometh.—Matthew, ch. 18, v. 7.

* Mr. Pierrepont read 1 Samuel, ch. 15.

. . . "It were better for him that a millstone were hanged about his neck, and that he were drowned in the depth of the sea."
—*Ibid.* ch. 18, v. 6.

All government is of God. The powers that be are ordained of God. Now, from whom came these words? Not from the Old Testament, but they came from the meek and lowly Jesus, the Savior of the world, who died for you, for me, for all. It is true, as the counsel have said, that God is a God of mercy; but He says, "Though I am a God of mercy, I will by no means clear the guilty."

The counsel who first addressed you, you will remember, said in his speech, with great earnestness and with screaming tone even, "We have had blood enough; let us have peace." The question before you, gentlemen, is not about blood; the question before you is not about peace; the question before you is whether you have not had murder enough, and assassination enough, and crime enough to have at least once before a civil tribunal in this land a trial and a verdict. Not a single one of all those engaged in this conspiracy have been tried before any civil tribunal; and the question now is, have you not had enough of this murder, and enough of this assassination, to have at least one jury of the country say, "We have had enough, and we will stop it!" You and I have nothing to do with the consequences. All we have to do is to do our duty, and ascertain whether the man is guilty. You do not punish the man; I do not punish the man. I have no feeling towards him of punishment, and you have no such feeling. The duty does not lie with you, nor with me. We have nothing to do with that. The question for us is to see whether this man has violated the law of the land; whether he is guilty of this violation; and then if, for any cause, the Executive sees fit to show leniency, he will show it; if he does not, he will not do it. It is not for you or for me to say what the leniency shall be. It is not for you or for me to have anything to do with that question. Our business is to see whether he is guilty of this violation of the law, and if he

is guilty, so to say, and then afterwards to say whatever may be thought fit to be said; but our duty is, and the duty of the courts is, to find out that one fact, and to have you pronounce your verdict, under your oath, according to the fact as you find it.

There are one or two other things that I must notice before I come to the main question. One of these is in regard to the attacks which were made by counsel, yesterday particularly, upon my learned friend, the District Attorney. Have you seen anything in his conduct in this case which was improper? Have you seen anything but an earnest desire to discharge his duty? If I understood the counsel aright yesterday, he said that if he were standing in that place, and he should have done as the District Attorney has done, he would expect the women when they passed him by to gather their skirts and pull them aside, lest they be contaminated by the touch. I did not at that time know why there was so much bitterness of feeling thus expressed; but I have been shown since last night this record, called the "Rebellion Record," and I find in it that on the 5th day of January, 1861, Edward C. Carrington, now District Attorney, issued to the public a remarkable letter in those early times, calling out the militia of this District for the purpose of protecting the Government of the United States; calling upon them to rally; and they did rally at his call. The fact of this gentleman, a native-born Virginian, one of your own number and living in your midst, having thus early taken the patriotic side in favor of his Government, when even his own State had deserted him, of course would be likely to call down the utmost bitterness and hate against this loyal and noble citizen. I can now understand it better than I could before.

We have been told, gentlemen, by the counsel upon the other side, that the Judge Advocate General has done a great many wrong things in his life; and we have been told that the military commission which Mr. Johnson established, and he alone, did wrong things in their prosecutions, and we have been told, likewise, that the Supreme Court of the United

States had decided that this commission was illegal. You would hardly expect an eminent lawyer to make such a statement unless he believed it. The counsel must have believed it, or he would not have made the statement. But he is wholly mistaken. No court in the United States has declared that this commission was illegal. There is no such decision on record. Four of those very persons who were tried and sentenced by the commission are now living and in prison; and if the Supreme Court of the United States had declared the commission that tried them illegal, would they still now, in time of profound peace, be kept in prison? Would there not be, by my learned friend, an immediate application to the Supreme Court for a *habeas corpus* to relieve them? There is not a word of that. No such decision has ever been pronounced. No court has, and in my judgment no court will, pronounce that this commission thus formed by the President of the United States was illegal.

Gentlemen, my belief in this case being that you honestly desire to get at the truth, and that you have no other desire, I propose to dismiss all these outside considerations and pass to the subject which is fairly before you. I have said but little compared with what has been said, and I propose hereafter to say even much less. I wish to lay aside all this rubbish and to pass to the solemn business of investigating into the truth of the charge contained in the indictment. You will see whether I do it fairly or not. I shall not deceive you. I could not if I would. I do not know you as the other counsel know you. They tell you they know you. My learned friend, the District Attorney, in his speech, told one of the counsel that he knew him, and that he was an actor, and that his acting in the course of this trial would have done great credit, if indeed it would not have surpassed that of Edwin Forrest. I do not know anything about that, but I thought some of you looked as though you knew whether there was any truth in that remark or not. I do not know, because I have not the acquaintance of that gentleman; but I think you will be able to determine between what is mere acting and what is stern

reality; between a drama played upon the stage and a truthful drama played in real life. I think you knew when witnesses came upon that stand, and you looked upon them, who told the truth, and who lied; and you knew the degree. You are men of business, and you are accustomed to see your fellow-men, to look into their faces, to deal with them, and to know their manner. There is a kind of instinct that goes out from the living witness who stands before you, and as between him and you who listen, you feel, you know whether he is telling the truth or not. You are not as accustomed to this as a lawyer, perhaps; but still you are accustomed to it in your dealings with men and you can tell whether a man is telling the truth or is not. I quite agree with the learned counsel when he speaks of the great advantages of having witnesses before you. I think you knew whether Bissell told the truth or not. I think you knew whether Cameron told the truth. I think you knew whether every other witness that you listened to here told the truth; for you did listen most carefully, and you have conducted yourselves here like men who felt that they had a solemn obligation resting upon them; who felt that they had some responsibility as connected with this Government; who felt that they had the peace and good order of society committed to their hands, and that this was a grave and serious business which they were called upon to engage in. I have wondered at the patience with which you have listened, and at the endurance which you have shown in this long and exhausting trial; and to me it does seem to foretell that when this case is through, the truth will prevail and justice will be done.

Now, gentlemen, I come to some facts in this case about which there is no dispute. I propose to begin with the facts which both sides concede. I will, therefore, tread upon no debatable ground here, and at this point allow me to make one general observation. In the arrangements of Divine Providence in this world things are so ordered that every truth is in perfect harmony with every other truth. It is always so. From that there is no variation. God is a God of truth, and

all the sin and woe on earth come from a divergency from that line of truth that proceeds from His heavenly throne. If everything was truth, there would be no crime. If all was truth, there would be no wrong. All wrong comes from a violation of that great principle. The moment you violate the truth, everything is out of joint. Every truth being in harmony with every other truth, every falsehood that is interposed dislocates it, and breeds mischief and injury to the community. It is so in the physical life. It is so in nature in every form. It is so in the moral world. Men are slow to believe this, but a little observation will show you how true it is. Even the clergy do not teach it as much as they should, in my opinion. You cannot violate a law of God without a punishment even on this earth. No man ever did do it; no man ever went to his grave, having violated a law of God, without having been punished for it, and no man ever will, even in this world. You all see that in the ordinary affairs of life. Mr. Alexander gives his note to Mr. Bohrer, and when it falls due he does not pay it. Mr. Bohrer knows he can pay it, but will not; Mr. Bohrer will never lend him any more money; he may be sure of that. Mr. Bohrer tells it about town; and it is not long before Mr. Alexander discovers that he has no credit. That is the punishment Mr. Alexander gets for not paying his note after having promised to do so. He turned from a truth to a lie, and he is having his punishment meted out in the loss of his credit and position. This is a plain and simple illustration that we can all understand and appreciate. Again: You place your hand in the fire, and of course it is burned. You thus suffer the punishment of violating a law of nature. Then, again, you may take poison. It may be a slow one, and therefore you may not at first perceive any effect from it, but the effect will come eventually. The froth from the mouth of a mad dog may touch a broken spot upon your skin, and it may be twenty years ere you die from the effects of that touch. It does not necessarily follow that the effect will always be immediate, but the effect in the way of punishment always follows violated law. That is the reason punishment

comes. If a law of nature had not been violated, it would not have come. The effect in some instances, as I said, comes slowly; in others it follows swiftly. In the case of a man's failing to keep his word, he loses his credit. In the case of his cheating his neighbor, he loses his credit. But there are more secret things than that. You may cheat your neighbor according to law, and you may be successful in it; you may cover it up so that the charge cannot be distinctly made; but you may mark this as a certain truth, that if you are a bad man, and a cheat, and you are doing wrong to your neighbor, you know it, and somehow or other you communicate that knowledge to a great many of your fellow-citizens who do not know it. They feel somehow or other, that they have no confidence in you, and in that way you are often punished for your secret crime, by the loss of the confidence of your fellow-men in you. When you come to them and look them squarely in the face, your guilty eye doth tell it. I need not pursue this topic further. At some future time, when you think this over, I will warrant that the more you think of it the more you will believe it, and you will find it is true, from the greatest to the minutest thing in this entire universe.

Now, let us come to a truth which we have got here fixed, one fixed truth in this case, and I say every other truth in the universe is in harmony with this truth. Here it is: John Harrison entered his name in his own handwriting, on the 18th day of April, 1865, in the register at St. Lawrence Hall, Montréal. There it is. The man is the prisoner at the bar. We all agree upon this fact. There is no dispute about it. Now, let us start from this point, and with the principle that every other truth is in harmony with this truth, let me ask what happened after that? Remember, I am speaking now of that which is not disputed. After that he passed through the hotel; he took no meal in the house, he contracted no bill, but fled somewhere. Where did he flee? He fled to the house of a man named Porterfield, and there for a few days remained in concealment. Then two carriages came up and

dresses were prepared so as to have each man dressed exactly alike; and in the night time, when all was darkness, one man got into one carriage and drove one way, whilst the other got into the other carriage and drove in a different direction. What did all that mean? What was it for? He was either fleeing because he had aided in the death of Mr. Lincoln in this conspiracy, or because he had not. Which was it? Was he fleeing because he had not? You will hardly say that. Then it was because he had, or because he had been engaged in something which made him wish to flee and secrete himself. Where does he next go? He goes in that carriage in the darkness of the night to a little place called Liboire, to the house of Boucher, whom you saw upon the stand—a priest—a priest who has not done any honor to his honored Church. When this Government was in pursuit of this prisoner, Cardinal Antonelli and the Pope, even before the Government ever made a request, hastened to deliver him up in conscience of the enormity of this great crime. This priest will hear from that Pope and from his bishop before he is a year older. As I said, the prisoner went to this priest's house, and he there concealed him, as he tells you, until the following July. Let us see what went on while he was being concealed in the house of this priest, where his friends visited him and where he was enjoying himself in hunting; where many, from time to time and day to day, came as his visitors. What was going on in this city at that time? A reward had been offered for his apprehension—a large reward—both by the city and by the Government; and there he stays in concealment. And what else was going on? His own mother had been apprehended and was on trial for her life. Where was her son? Concealed, visited by this people. And why concealed? Has the counsel explained to you why he was concealed? Not a bit of it. Why was he concealed? It was either because he was innocent or because he was guilty. Which was it? You will have to determine that. Now, let us turn a moment and see what was going on here during that time. The mother and the other conspirators were on trial. The proceedings

were reported every day in the newspapers, and the entire civilized world were notified of it and were reading it. Did he not know about it? He was within thirty-six hours of this city and kept there concealed; changed the color of his hair, changed his garments, wore spectacles for disguise, was visited by his friends who were traitors to his Government. Did he not know what was going on? Let us see whether he did or did not.

I hold in my hand a very curious little paper, and let me say that I never knew a trial of great magnitude, and where there was fraud or crime, that these things did not appear. They always do. I knew they would before this trial commenced, though at that time I had never heard of this paper. What is it? Here is a paper with a mark and a cross, and then "S," "P," and then a "C," with a blank line between, and then the words "all right," "Toney," "No hurry," addressed to "A. G. Atzerodt, Washington, D. C." Let us see what further there is about it. It is put into the postoffice in New York on the 15th day of May, 1865, soon after the trial of his mother and of Atzerodt had commenced, and that trial continued, and the death warrant, the original of which I have here, was signed on the 5th day of July following. Yet he wrote that letter to one of his co-conspirators and put it into the postoffice in the city of New York on the 15th day of May. They wanted to make some little question, I believe, about the handwriting. Gentlemen, here is the handwriting. I will show it to you. Here is the card that nobody denies. They are as much alike as any two things can possibly be. It is his own natural hand, and here is the letter which he admits to be his own. Here is this card and here is this writing. They are exactly alike. The writing is not even disguised in the least.

Now, what did all that mean? You heard Boucher's account here. I shall come to him in the progress of the examination of the evidence. He says the prisoner stayed with him until the latter part of July. Then he stayed till after the

execution of these criminals. Then what did he do? He took him secretly to the house of another priest, named LaPierre, who had more discretion than to come here and tell the world of his shame. He did not come; he is a wiser man. I tell you again this Boucher will hear from his Pope and his bishop before he is a year older. The Catholic Church never did sanction such a crime as this, and His Holiness the Pope hurried with unusual zeal to deliver up the fugitive in his dominions, although we had no treaty of extradition, the moment he heard that he was the one suspected of participation in this horrible crime. Well, he takes him up to LaPierre's, and there he is concealed, and concealed until when? He is concealed until the following September, receiving his friends and amusing himself the best way he could with safety to his life. In September, just five months after this murder, La Pierre takes him upon the steamer Montreal, locks him up in a stateroom, and takes him down for the purpose of putting him on board the Peruvian, having first gone to Dr. McMillan, the surgeon of the ship, and told him he had a friend who was in some difficulty that wanted to escape without his name being known. There he goes, and he is introduced to McMillan as McCarty, wearing spectacles, and with dyed false hair. The steamer starts for the Old World, and now what happens? He had not been on that steamer thirty minutes after she started before he appeared startled, and, looking round, said to McMillan, "That man is an American detective; he is after me." The wicked flee when none pursue; the righteous are as bold as a lion. He was not very bold, was he? He put his hand in his pocket and drew out his revolver, remarking, "but this will fix him." McMillan inquires, "Why do you think this gentleman to whom you refer is an American detective; and, if so, why would you care?" "Ah," says he, "I have done such things that, if you should know them, it would make you stare." What were the things he had done? He had run away from his mother, to be sure; but boys have done that before. What were the horrid things he had done, which, if McMillan knew, would make

him stare? Why did he startle at seeing an American detective, as he supposed, but who turned out to be a lumber merchant from Toronto? Why see a ghost behind every cord of the ship? Why frightened at everything that there appeared, and start whenever any one was near? He was innocent, they say! Well, we will follow him on.

Somehow or other there was such terrible stuff weighing upon his heart that he could not keep it to himself, and he had every once in a while, for the purpose of unburdening his guilty soul, to go behind the wheel house and talk to McMillan (the only one he knew), and from time to time detail to him the scenes through which he had passed—those which left such a horrid impression on his mind. It was a relief. Criminals tell us that it is always so. Most criminals, sooner or later, if they are not brought to justice, will return to the place of their crime, and in very madness and torment at their guilty secret tell it out. They cannot keep it. When the prisoner got on to the lone ocean, where only one whose name he knew was there, he could not help but tell his secret, and he told it. You know very well what it was. I shall come to what it was before I am done. When he came to Ireland he hesitated whether he should land on the Irish coast, or whether he should wait until he got to Liverpool; and he consulted Dr. McMillan as to which he had better do. Says Dr. McMillan: "I cannot tell you which you had better do; you can do just as you please." He replies: "I will go to Liverpool." Finally, as they neared the coast of Ireland and were coming into the bay, McMillan found him unexpectedly upon the deck, with his clothes on and a little satchel in his hand, ready to depart. The prisoner says: "I have changed my mind. It is now night and dark, and I have concluded I will land here in Ireland." What then did he do? He wanted him to go into the bar room and drink. It being late at night, the bar was closed, but they found the barkeeper and had it opened. What did he then do? He takes tumbler after tumbler of raw brandy, until he is mad drunk, and McMillan calls an officer to watch him as he

passed over the gang plank. Why was that? We have now got him in Ireland. He landed there. He had not been in Ireland long before something seemed to whisper in his ear that this gallant land had no place for treason and for murder, and he vanished from Ireland. Where next do we see him? Next he wanders about muffled in the darkness of the night in Liverpool. He had not been there long before something there seemed to say that England's air could not long be breathed by treason and by murder, and he fled. Where next do we find him? He went to Rome, away from his language, his country, his kinsmen, his all. He changed his name there to Watson. He enlisted in the Papal Zouaves and went away from Rome. Was he not safe then? Oh, yes, to be sure, he is safe; he is in the disguise of a Roman Zouave, and he is ordered away to Velletri, far from Rome; none but Italians are there; none but people of a foreign language are there; all are strangers there; and now he is safe! Safe! God does not allow such things as that to be safe. It must have been an awful hour when he saw peering through the cap of the Zouave the old familiar face of St. Marie, who knew him at school. Those things are not permitted—God is wiser than we. What then happens? He walks down the road soon after, and says to St. Marie: "Let by-gones be by-gones. I want to save my life. I escaped from Washington in the disguise of an Englishman on the night of the assassination, and I got away and I am here." And this disguise of an Englishman, and the courier's bag of an Englishman which he carried, and the handkerchief, are subjects to which I shall call your attention when I come to the specific evidence. I am now speaking generally of what occurred. Then he heard coming from the Vatican, in no whispered tones, that the State of His Holiness the Pope had no nook or corner in which treason and murder could rest; and then, in desperation, he made that fearful leap at the peril of immediate death and escaped to Malta, and when he reached that island in the Mediterranean sea, there something still did haunt him and

tell him that there was no hiding place there for treason and for murder, and thence he vanished.

He flies into Egypt. Was not he safe then? He had got into that "ancient land of mystery and of eld," where the Pharoahs dwelt; where Joseph was a slave; where Moses lived; where by the power of devils and by the power of God such miracles were wrought. Up to the wondrous Nile he goes, on whose banks are the grandest ruins of forgotten empires; where are the pyramids; and there, even, the colossal Sphinx, looking at him with stony eyes, seemed to say, "What scourge for treason and for murder can this dark monarchy afford this traitor;" and he fled no more. His knees smote together, and his arms fell nerveless at his side. He resisted not at all. He gave himself up without a struggle, was placed upon a ship of war of the United States, and came over the long sea, and up the broad river to the city of his crime. Two years between the crime and the arraignment—two awful years. God grant that neither you nor your children may ever pass two such years as those. He is brought before the Grand Jury of your city, and is indicted for the crime.

Now, this was the strange flight of an innocent man, as my learned friend says, or rather argues, it was. What do you think about it? Do you think that innocent men do those things? Do you think he fled because he did not engage in the murder, or because he did, which?

Gentlemen, let us see if we can unravel this mystery. It is certainly a mystery as it now stands, that an innocent man thus fled. I think that we can get at it. What was it? Let us come back in the history of time a little. You will remember that on the anniversary of that day on which the Savior was crucified the President of the United States was murdered and Secretary Seward was assassinated. It is a day that will ever be remembered in the history of this country. It will not be forgotten. The enormity of the crime sent a shudder through the civilized world. For no cruelty, for no oppression, for no wrong, but simply for his holy devotion to

liberty and the serving of his country, was he thus foully murdered. As you well know, the pathway of his youth was not smoothed with daliance and with luxury, but it was rough and stony and thorny with affliction and with toil. He had always been a man of sorrows, and his acquaintance with grief had left a deeper melancholy in his face than could be seen in any other. A few weeks before he died, you will remember, he uttered these ever-memorable words:

"Neither party expected for the war the magnitude or the duration which it has already attained. Neither anticipated that the cause of the conflict might cease with, or even before, the conflict itself should cease. Each looked for an easier triumph, and a result less fundamental and astounding. Both read the same Bible, and pray to the same God; and each invokes His aid against the other. It may seem strange that any men should dare to ask a just God's assistance in wringing their bread from the sweat of other men's faces; but let us judge not, that we be not judged. The prayers of both could not be answered; that of neither has been answered fully. The Almighty has His own purposes. 'Wo unto the world because of offenses, for it must needs be that offenses come; but wo to that man by whom the offense cometh.' If we shall suppose American slavery is one of the offenses which, in the providence of God, must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both North and South this terrible war as the wo due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him? Fondly do we hope, fervently do we pray, that this mighty scourge of war may speedily pass away. Yet, if God wills that it continue until all the wealth piled by the bondman's two hundred and fifty years of unrequited toil shall be sunk, and until every drop of blood drawn with the lash shall be paid by another drawn with the sword, as was said three thousand years ago, so still it must be said: 'The judgments of the Lord are true and righteous altogether.'

"With malice toward none, with charity for all, with firmness in the right, as God gives us to see the right, let us strive on to finish the work we are in; to bind up the nation's wounds; to care for him who shall have borne the battle, and for his widow and his orphans; to do all which may achieve and cherish a just and lasting peace among ourselves and with all nations?"—Lincoln's Second Inaugural Address, March 4, 1865.

And a short time earlier, before this 'bloody sacrifice, he wrote to a poor woman, who had sent all her sons to battle and to death, this short letter:

"Executive Mansion,

"Washington, November 21, 1864.

'Dear Madam: I have been shown, in the files of the War Department, a statement of the adjutant general of Massachusetts, that you are the mother of five sons who have died gloriously on the field of battle. I feel how weak and fruitless must be any words of mine which should attempt to beguile you from the grief of a loss so overwhelming. But I cannot refrain from tendering to you the consolation that may be found in the thanks of the Republic they died to save. I pray that our heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.

"Yours, very sincerely and respectfully,

"A. Lincoln."

This, gentlemen, as I have already said, is a trial of one of those conspirators; and it has this marked feature in it: It is the first judicial trial that has ever been instituted to try any of those conspirators. Our freedom-loving race and the sturdy blood from which we sprang have always clung with exceeding fondness to liberty, to the right of trial by jury in the courts of law, and they have always been jealous of military power. When the other conspirators were tried, it was claimed that as the President of the United States had been murdered in his camp, it was eminently fit that the trial of those conspirators should be held by military men. Many said that in the city of Washington there was so much feeling of sympathy with the rebel cause, there were so many enemies of our country here, that the chances were that a jury would not be found within which there would not be some one or two in sympathy with the traitor and the assassin, and thus prevent a verdict. That argument was used in favor of a military tribunal, instead of a trial in the courts of law. I am one of those who at all times, and on all occasions, have insisted that the civil courts, with a jury of twelve men, were competent to the trial of these crimes. I have always believed it. I believe it now. It is for the very reason that I believe it that I stand here. I have always proclaimed it. I do not stand here, called because I belong to the side of the Republicans, for as all know I never did. The office which I

held was given me by Democrats. The office which I now hold in the convention was from the democratic city of New York. I am called here because I believed and because I ever insisted, that a jury of twelve honest men, when they find a man guilty, will say so; and that the court is competent to administer the law, and that you are competent and willing to administer justice. If you set at naught all my confidence, and if you prove to the world that I am wrong, and that a jury of twelve men in the city of Washington will not find a man guilty of this great crime when he is proved to be guilty, then I will acknowledge that I have been mistaken, and bid farewell to the cherished dreams of my youth and of my mankind, which whispered that my country might continue to be free; for I know that no country can long be free that will not administer justice and punish great crimes. Society will have protection; property will have protection; life will have protection; and if it cannot come through the civil tribunal, then every good man will hail the military, and all will join in saying, "if our rights are thus to be swept away, let the useless ermine fall from the judge, let the sword write the record, and let the military commander execute the law."

I do not know what purposes the great Ruler of the world may have in this trial; but of one thing we may all be assured, that this is no unmeaning trial. It is, as I have said, the only trial before a court and jury of any of these conspirators. The whole civilized world is looking on. There is not a hamlet in this great country that has not already read the evidence. There is not a country in the whole of Christian Europe that will not soon have read it. The whole world is listening to it, and our enemies are hoping that it will here be proved that liberty cannot exist in this happy land. Our enemies, who wish arbitrary power, would be delighted beyond expression if they could find that a jury in the city of Washington would not convict a criminal of this great crime when the evidence proved him guilty. Every lover of freedom, every lover of constitutional liberty, every lover of our

free and blessed Government, will fall on his knees and pray that no such calamity may befall our country as to have a jury of twelve men, or one out of the twelve, refuse to find a man guilty when the law and the evidence say that he is guilty.

In a great country like this, of course there are varied interests. There are many men who feel hostile, one toward one political party and the other toward the other in this country. We have been through with a civil war, which tends to inflame the passions. Congress, as you know, has recently been in session here, and has just left. Of course, these grand political subjects are topics of constant conversation. A great many men from interested motives, some from political motives, and some possibly from patriotic motives, are very anxious to try to remove away this capital from its present place. They say it does not belong here; that it is not in sympathy and harmony with this Government; that it is full of people who hate the Government, and therefore they would like to see it removed. They would like any excuse to get it removed. A great many others desire to have it retained here. Many who live on the other side of the mountains would like to seize on any ground to take up this capital and move it over there, where it is more central; and what every such man of all things wants to be able, at the top of his voice, to say in Congress, when they meet in November, is, "You see it is just as I told you. You cannot get justice in the city of Washington; a jury of the city of Washington refuse even to find guilty the assassin of the President, who is overwhelmingly proved to be guilty. We will remove the capital far hence. We will take it to a place where a public officer shall be safe, and where those who are in power may be relieved from the dangers of assassination, which they cannot be if a jury of the country say it is right."

As I said, great issues hang on this trial, it being the first and only trial of the conspirators before a civil court and a jury of twelve men. Its responsibility and its magnitude cannot be overstated. He is guilty, or he is not guilty. Which is

it? If he is not guilty, he has been very badly treated. If he is not guilty, he has been flying about the world in disguise to very little purpose. If he is not guilty, your Grand Jury have done him a great wrong. If he is not guilty, the Pope did him a great wrong when he thus surrendered him when he was not obliged to do so. If he is not guilty, the whole world almost have done him a terrible wrong. How are you going to repair it? It ought to be repaired. He ought to be paid high for all this great wrong if he is not guilty. He is guilty or he is not. What I propose is, from this evidence, under the law, to prove he is. Now, if evidence proves anything, or ever did prove anything, it will prove it here, and what I propose is, when I come to the discussion of this evidence, not to give you my confident assertion about what is evidence, but to read it to you, that those who shall ever take the trouble to read the report of the speech I make shall find in it the evidence on which I rely, given from the book, word for word; and it will be read, and this whole civilized world will give its verdict upon that evidence. It is upon that evidence that I shall ask your verdict.

Gentlemen, we have lately, as you know, acquired possessions from Russia. Suppose you and I go out there after this trial is over to make an exploration, and, as we are going through the forest, we find a baby wrapped in a blanket. What would be the inference at once? It would be that the baby came there by some human hand. It would be that it had a father and a mother. It would be that it was wrapped in the blanket from tender care of a human being. You would have no doubt about it, would you? Would you want me, when I came back and was stating to an audience that Mr. Todd and I had seen that there, to prove that the baby had a father and a mother, or that the blanket was wrapped around it by some human being from tender care? It is one of those things, you would say, we know, and not a thing to be proved. It is true that the Rev. Stephen F. Cameron might swear, in his imaginative way, that he had seen babies growing out in that country like toad-stools under a tree, but you would not be-

lieve it. (Laughter.) And although Bissell should come and swear that he had seen spiders weave the blanket in which the child was wrapped, you would not believe it. You would believe your experience and your knowledge of the laws of nature and of God. God hath given us reason and intuition by which we arrived at conclusions, by which we know a thousand things that are not proven, and are not to be proved. On these we act in forming our judgments when we come to weigh evidence and determine in our minds as to whether we believe or do not believe the thing presented as a fact. For instance: you may take this tumbler which I accidentally broke; you see its bright edges where it was broken; you did not see it broken, but I did. I know that piece came from this piece; but when I put that to this (putting two pieces together), and you see that every blister in the glass, and that every part of it exactly fits, you know that that came from this just as well as I know it; you do not need any other proof; it is a demonstration. No human hand, no skill of Chinese art, can cut the glass and mark the little blisters and little veins you here see so that the one shall exactly fit the other. It is not in human power to do it. Nothing short of Almighty power can perform that feat. It is proved. There you see, in the bottom, something looking white. That tumbler we will suppose to have been found off in a rubbish heap behind a house. Well, what of that? The owner of that house died about three months ago, and he was suspected of having been poisoned. There was not any proof of it at all; no proof could be had. His loving wife had gone in deepest weeds to his grave, and wept most profuse tears over it. She had not poisoned and murdered her husband, of course. Somebody had, they found on investigation. Well, they find in a rubbish heap this glass with a little powder at the bottom of it. The physicians and the chemists examine it, and they tell you it is arsenic. Well, what of that? That does not prove that the man's wife murdered him, surely. Let us go a little further: There is the broken glass; there is the arsenic at the bottom. But that does not connect it with any-

body. It happens, however, that a negro servant, in the chamber where the sick man lay, is moving back a bureau, and she finds that piece of glass (holding up a piece of tumbler to view) behind it. Well, what of that? That does not prove anything; it is a perfectly clean piece of pure glass. There is no poison about that—none. She shows it to my friend Mr. Carrington, the District Attorney. She does not know why; she merely finds it and hands it to him as he is investigating about the premises, and she remembers that on a certain day, when she was moving back that bureau, a tumbler fell over, and a piece was broken out of it. What did she do with the tumbler? She says, "Well, I gathered it up and I put it away; but I do not know where; I threw it away." We take this piece of glass that was found behind the bureau, and we bring it to the side of this tumbler that I hold in my hand, and we find that one was broken from the other. There is no proof about it, except the edge and the fitting. Would you doubt it was broken from it? Would you have much doubt that that was the tumbler that stood on the bureau, and from which this piece was broken when the servant turned it over, and which had in it the arsenic? And when you find the arsenic in the man's stomach and inquire into the motive that led to his death, would you not think that you had traced a murder through a demonstration of those two little things? You cannot get rid of it; you have got the proof of it; you cannot help it; and your mind cannot doubt if it tries.

Those views relate to physical science merely. Let us now come to the moral. You will find that is just as certain and just as capable of demonstration to the human mind as the other. Take what we know from our intuition and from our reason. We know that men having no motive to speak otherwise speak the truth. You know that when you are going up the street, and you ask a man, "Have you seen the President passing in his carriage?" he will tell you yes, or tell you according to the truth, unless he has some motive to tell a falsehood. That we know, from our experience, that all men tell the truth, unless they have some motive to falsify. Some-

times it is a love of telling a great story ; sometimes it is from malice ; sometimes to clear one's self of crime ; but as a rule we know men tell the truth. We know when witnesses are called upon the stand, having no other motive than to tell what they know, they will tell the truth. That is our experience. That is the way we live. It is the only way you could try any cause. It is the only way you can recover a debt. It is the only way you can decide anything in human affairs. It rests on the great fact that men as a rule tell the truth ; and on that great fact we build up everything in our action, and we get information one from the other day by day and act upon it. Further, we all know that a woman will never desert her child unless she has some great motive for it. We know that a son will never tear asunder all the ties he owes to his mother, to his sister, to his brother, to his country, to his native land, to the government which protected him, without some great motive. That we know. We do not need to have it proved. I do not need to say anything on those subjects, but simply to state them to you. We know that the father will protect his child. We know that he will give his fortune to save him from infamy. We know that he will do anything to protect his daughter. He will give his money, his liberty—yea, often will he give his life, and willingly give it. When you find a father cruel to his son, or a son deserting his mother and his sister in time of great peril, and in time of their direst need, you know he does not do it unless some great and terrible motive impels him to do it. That we all know, and then we look for the motive and undertake to ascertain what that motive was which led to such an unnatural act. That is an honest, fair way of reasoning, as you will certainly say, and of judging of human action.

We know, gentlemen, several other things that need not be, and never are, proved in a court of justice. We know that it is not possible for a man to be in two places at the same time. That is a self-evident truth. You know that a man cannot be in Elmira and in the city of Washington on the same day, or at any rate the same hour of the same day. You

know he cannot be in Burlington and be in Montreal at the same moment; that does not need to be proved. You know that when a man has great motives, such as the desire to save his life, he will take any means to save it, and you know that he will swear to any falsehood, that he will make up any evidence, and you know that one of the most common things, if you have ever read much of proceedings in courts, is to attempt to prove an *alibi*. As has been justly said by all the writers upon the subject, it is one of those things most easily forged of any defense that is ever attempted. It grows out of the fact that it often happens that honest witnesses prove an *alibi*. They are honest about it, and the facts they state are facts. The only thing that differs is in the time. You will remember the great case of Webster, to which attention has been called. When Dr. Webster was tried in Massachusetts for the murder of Dr. Parkman (see 4 Am. St. Tr. 93), a number of the most respectable citizens of Boston swore to an *alibi*; and they swore to it circumstantially. They swore to seeing him in a particular store where they had gone for a particular purpose. They looked at the books and found the charges made at the time that was stated, and all the circumstances seemed to conspire to prove that he was not the murderer of Dr. Parkman, but that he was in a different place from that alleged. It is quite possible that many of you can recall your own reading of that great case. I well remember it, and well remember that I believed at the time that he was innocent, and that it was Littlefield, the janitor, who had committed the murder, when I found so many respectable persons, men and women, of Boston swearing positively to the fact of his being in another place. The jury, however, who saw and heard the witnesses, and who heard the whole case, found, without hesitation, that he was guilty, and he subsequently admitted his guilt and told all the circumstances connected with the murder.

In a book which I read to the court the other day the author says:

AMERICAN STATE TRIALS.

"An unsuccessful attempt to establish an alibi is always a circumstance of great weight against a prisoner, because the resort to that kind of defense implies an admission of the truth and relevancy of the facts alleged and the correctness of the inference drawn from them; and where the defense of alibi fails it is generally on the ground that the witnesses are disbelieved and the story considered to be a fabrication.

"It is not an uncommon artifice to endeavor to give coherence and effect to a fabricated defense of alibi by assigning the events of another day to that on which the offense was committed, so that, the events being true in themselves, are necessarily consistent with each other, and false only as they are applied to the day in question. A learned writer reports a case where a gentleman was robbed, and swore positively to the prisoner; but, nevertheless, the completest alibi was proved; the witnesses, examined separately, all spoke to the same minute circumstances transpiring whilst the prisoner was in their company on the day and hour of the robbery; and, in particular, that a church-bell for funerals was tolling, which in fact tolled almost every day at that particular hour when the robbery was committed. The prisoner was acquitted. A year afterwards the gentleman, seeing the prisoner in a little shop, went to him and gave his word that as now all danger was over, if he would tell him the truth no injury should happen to him, but the contrary. The man said, 'I did rob you; the alibi was concerted; I knew it was false; and when the jury turned around to consider the verdict, I felt a shuddering within me unlike anything I had ever before felt or believed I could feel.'" *Wills on Circumstantial Evidence*, p. 115; *Law Library*, vol. 41, p. 51

It is the easiest thing in the world for a man who is anxious—and especially where the question is one of life and death—to bring himself to believe that he saw the man on a day other than that on which he really did see him. He did see him, we will suppose, and he saw him on a particular day, but it is necessary for the defense to show that he saw him on the following day. In regard to that he is not sure. He says, "I am not positive; I know I saw him about that time, at least a man that looked like him; I did not know him." "Yes, but don't you think it was the day after?" Well, I don't know; it was within two or three days of that time." "But this is a question in which a man's life is involved; don't you think it was the 15th you saw him." "I don't know; it was the 12th, 13th, or 15th; I cannot tell which." "Don't you think it was the 15th?" "I am not sure about that." So he twists

it over and thinks it over until he may finally bring himself to believe he saw him on the day named. He says to himself, "Any way, it is not swearing against a man's life, and if I am mistaken, it is only in favor of a human life; and I think it was—I think I may say it was that day." It is not very difficult to do it. Worse things than that have been done in the trial of men for great crimes.

Our learned friends on the other side have told us, in the progress of their argument, that they could not subscribe in the least degree to the doctrine that it was a higher crime to conspire against the Government of the United States, and through that conspiracy commit a murder upon the person of the Chief Magistrate, than it was to murder the humblest vagabond in the street, or words to that effect. That is not the doctrine of a statesman; it is not the doctrine of the Bible; it is not the doctrine of the law. It is a far more heinous crime to conspire against the Government of the United States and to murder its President for the purpose of bringing anarchy and confusion on the land than to murder a single individual. It is because its consequences are so much more terrible. It is because it is involving the lives of hundreds and of thousands. It is because it is involving considerations affecting the stability, the protection, the life, the liberty, it may be, of a nation. The law of England, which I cited, but which it would see my friends had not read, lays it down, and without a statute, as the common law, that it is a crime of such heinousness as to admit of no accessories. They, however, undertake to say that the crime of the murder of the President of the United States in time of war or great civil commotion is not as heinous a crime as it would be in England to murder the chief of their country; and that there is no divinity about our Government. What is its origin? All government is either of God or the devil, and they will have to take their choice. I say the government is of God, and that no other government will stand. What said the civilized world upon this subject? I wrote a note to the Secretary of State two days ago asking him to send me the letters that were sent

from the different governments of the civilized world upon the subject of this murder, and what do you think he sent me? He sent me the note I hold in my hand, and with it this large printed volume. It takes every line and word of this book, a book of seven hundred and seventeen pages, closely printed, to contain the letters of condolence that were written to this Government from the foreign governments of the world. Entire Christendom wrote, entire Christendom looked upon it as one of the most horrible of crimes—one that required every nation, even to the Turk, to write for the purpose of expressing their abhorrence of the crime. And, gentlemen, I hold in my hand the original paper, sent by some thirteen thousand rebel prisoners, prisoners in our hands, at Point Lookout. Here is the paper, in which these rebel prisoners, met together, passed their resolutions of condemnation and their curse upon this crime. I would try this case before any twelve of those rebel prisoners, and feel certain of a verdict; and yet the gentlemen tell us this murder is like that of the commonest vagabond that ever walked the street, and the crime no higher. Not so thought the rebels; not so thought any honorable man in arms against us; not so thought you; not so thinks any right-minded man on the face of the earth.

I pass, gentlemen, from all these general considerations now to the evidence in this case. As I have already said, I do not know you as the other counsel know you; but I do believe that you wish earnestly and honestly to know the truth of this case. I do not believe you will be influenced by any mean or selfish motive in your decision. I believe you are far above all possible considerations, except those great considerations which should weigh upon you in this great case. I pass from what I have said to an investigation of the evidence.

You know, gentlemen, there is a class of men who are called experts; we have had them upon the stand here in the investigation of this case. We have had them for the purpose of determining the handwriting of different parties. An expert who is skilled is able not only to determine handwriting when it is disguised but the handwriting of another by comparing

it with that which is known. It is a very curious fact in our history—a discovery which science, and especially the investigations in the law have made—that no man can disguise his hand. He may in a few letters or a few words, but he cannot write any considerable number of words and disguise his hand. And it is on that principle, without our thinking much about it, that we are able to do business at all. Checks are constantly coming to the banks to be paid; receipts are given for debts due; letters are written; book accounts are kept; contracts are made, all depending upon this grand principle that each man has a handwriting peculiar to himself. It is as peculiar as his face; it is as certain as his expression; he can no more disguise it than he can disguise his walk from those who are acquainted with it, and who will watch it. He may disguise his walk for a short distance, but he cannot disguise it long; and he cannot disguise his handwriting if he will write a page. And another thing no mortal man can do; no mortal man can twice write his name alike. There is no man on the face of the earth that ever did it or that ever can do it. You may write your name, and then write it ten thousand times immediately after that, and you will find that there are no two of those signatures which you can place one over the other and exactly fit. That is as well ascertained as any fact on earth, and so true is it, that when we find one signature that will exactly lie over another in width, in length, and in every possible respect, we know it to be a forgery; it has been laid upon the genuine signature and traced. You cannot disguise your hand from one who is familiar with it and expert in it; and you cannot disguise your walk; and you cannot for any considerable length of time disguise your voice. It was attempted by this prisoner with Hobart. The walk is often attempted to be disguised, and the handwriting to be disguised, as in the case of Booth; but to one familiar with it, experience in it, an expert, it cannot be done.

That is true in other things. In your various callings and business, connected with cloth, or with fur, or with iron, or with gold, or with silver, or whatever may be your callings,

none of which I know any thing about, you are experts in your goods and wares, or whatever you are doing, and you can tell in a moment things that I can tell nothing about. I do not know where the goods were made. I do not know whether the sable that is offered to be sold to my wife at an expensive price is colored by a dye or the real and natural one; but the furrier knows and can tell in a moment. The watchmaker can tell whether the watch presented is a false or a true one. I can tell nothing about it. In the city of New York is the assistant treasurer's office—I believe they have a similar one here in Washington; there is an expert in coin. You may take a basketfull and pour it out on the counter, and he will pass over the whole just as fast as the hand can go and pick in every instance the base coin, and never make a mistake. He has been there twenty years. He is well known in our city. We have plenty of men there who will run over banknotes with any amount of speed, and select the false and throw them out in a moment. So in China, where silver is used not in the shape of coin, they have those who can tell the fineness of it by the eye and by the touch—men devoting themselves solely and only to that business, and they do not make mistakes. You have in all your varied trades and callings men who, from experience and natural fitness, are expert in a particular thing, and they can tell what others cannot, and therefore they are called in to give their opinions.

Now, it never seems very much to have occurred to people that there are experts in relation to moral questions and in relation to evidence, just as much as in relation to the physical sciences and matters of sight. But it is just as true, and it is just as easy; and I undertake to say that any lawyer who has practiced law for twenty years, and is not an expert in detecting the false evidence from the true when he sees a witness' eye and hears his voice, and sees his hesitation and his manner and mode, his consistency or inconsistency, if he cannot select the true from the false, had better take some other calling. He is not fit for that business. No lawyer who has had an experience of twenty years, and has had any mod-

erate success, can fail to know, for he can detect it from that intuitive feeling and sensation by which he knows when a man comes upon the stand whether he is telling the truth or whether he is telling a falsehood. He will not have uttered five sentences before it will be betrayed in his eye, it will be betrayed in his manner, it will be betrayed in the inconsistency of his words, it will be betrayed in a thousand ways which you cannot tell, but which you feel and know.

I propose now to apply some of these principles that I have been talking about to the evidence in this case, and I first come to the positive evidence. I had occasion to remark, I think, to the court, in arguing a legal proposition, that it was always in a case of murder proper to look at the position of the parties who are charged, and to consider the motive in the case, for the purpose of coming to a reasonable conclusion as to whether the thing was done or was not done. As I have already said, men do not commit a crime without an object; and we are to look to see a motive where we find a thing done contrary to the course of human events.

In March, 1863, Mrs. Surratt was keeping a tavern at a place called Surrattsville. I believe the ville consisted of the tavern. Her husband had died in 1862, and there were left the son Isaac, the daughter Anna, and the prisoner at the bar. As the counsel tell you, and as all the facts show, they were poor; they had but little means. In the autumn of 1864 the mother moved to the city of Washington, to 541 H street, and opened a boarding house. Her eldest son was in the rebel army in Texas. Her other son was a man full grown, and came to this city with her. He was in no employment in November, 1864, when she opened the boarding house. Now let us see at this time what were the sentiments of the family in relation to this subject, which afterward became the object of hostility, of vengeance, and of murder. I read from the testimony of Mr. Tibbett:

"I heard her (Mrs. Surratt) say she would give anyone a thousand dollars if they would kill Lincoln."

He states that her son was present. He states further these words:

"Whenever there was a victory I have heard Surratt say the d—d northern army and the leader thereof ought to be sent to hell."

That was in 1863. In March, 1863, Herold, who was one of these conspirators, and is admitted to be, was with John Surratt, at Surrattsville, and was one of his acquaintances. In 1864 John Surratt was at Piscataway church, with this same Herold, and in December, 1864, John Surratt was at the National Hotel with Dr. Mudd and Booth, at room No. 84. Mudd was an old acquaintance and Booth was a new acquaintance. And this was Surratt's first introduction to Booth. To this I want to call your attention. I propose to show you from this evidence—and I have given it some attention—the time when Surratt first became acquainted with Booth and the time when he was first drawn into this conspiracy, and to trace it, date by date, by evidence which cannot lie, to its final consummation.

"In the winter of 1864-65 I was invited one evening by Surratt to take a walk with him down the street. We left the house, and walked toward Seventh street, and went down Seventh street. Just as we were opposite Odd-Fellows' Hall, somebody called, "Surratt, Surratt." I said, "John, there is some one calling you." He turned, and as he turned recognized Dr. Samuel Mudd, an acquaintance of his, from Charles county, Maryland. He shook hands with the doctor, and then introduced him to me."

This is Weichmann's testimony.

"Dr. Mudd then introduced his companion, as Booth, to both of us. After the etiquette consequent on such occasions, Booth invited both of us to his room at the National Hotel. Arriving at the room, Booth requested us to be seated, rang the bell, and had the servant bring drinks and cigars to the room for the four gentlemen assembled. I made some remark about the appearance of the room; Booth said yes; it was a room that had been occupied by a member of Congress.

"The number of the room at that interview was 84. Booth took down some congressional documents from the secretary, and remarked what a nice read he would have to himself when left alone.

"Dr. Mudd was still there. After a little conversation, Dr. Mudd rose, went out into the entry that led by the room, and called out Booth. They did not take their hats with them; they did not go down stairs, because, if they had done so, I should have heard the noise of their footsteps. After five or six minutes they returned to the room, and John Surratt was called out. The three then remained in the entry for several minutes, and came back again. Dr. Mudd then came over to me where I was sitting, and remarked, "Weichman," said he, "I hope you will excuse the privacy of the conversation; the fact, Mr. Booth has some business with me; he wishes to purchase my farm in the country, but he does not want to give me enough." Booth also came to me and made an apology to the same effect, saying he did intend to purchase lands in the lower part of Maryland, and that he wanted to buy Dr. Mudd's farm. I was then seated on a sofa near the window. Booth, Dr. Mudd and Surratt then seated themselves round a center-table in the middle of the room, about eight feet from me. They then began a private conversation audible merely as to sound. Booth took out from his pocket an envelope, and made marks on the back of it, and Surratt and Mudd were looking intently at him. From the motion of the pencil I concluded that the marks were more like roads or straight lines than anything else. After about twenty minutes' conversation around the table, they rose, and Dr. Mudd then invited us around to the Pennsylvania Hotel, where he was stopping. Arriving at the Pennsylvania Hotel, I sat down on a settee and talked with Dr. Mudd. Booth and Surratt seated themselves around the hearth, and talked very lively there, Booth showing him letters, and Surratt evincing a great deal of glee. About half-past ten Booth got up and bade us good night. We left a short time after, Dr. Mudd stating that he was going to leave town next morning. On going home, John Surratt remarked that the brilliant, accomplished young gentleman, to whom I had been introduced, was no less than J. Wilkes Booth, the actor. When I first met Booth on Seventh street, I did not know that he was an actor at all. I had seen him several times on the stage, but I did not know that he was J. Wilkes Booth, the actor. I knew when he told me so. He said that Booth wanted to purchase Dr. Mudd's farm, and that he, Surratt, was to be the agent for the purchase of that farm. Some weeks afterward, when I asked Mrs. Surratt what John had to do with Dr. Mudd's farm, and whether he had made himself an agent of Booth, she said, "O, Dr. Mudd and the people of Charles are getting tired of Booth, and they are pushing him off on John."

That is the first time Surratt met Booth, and this drawing of the farm probably suggests to you what it would suggest to anybody. There was not any purchase of a farm: no such thing was ever intended, and there is not a particle of evidence that there was any such purchase. If it had been about

the purchase of a farm, they would not have taken so much pains to make Mr. Weichmann know it. When men are engaged in something they wish to conceal, they are always careful, and very often betray themselves by their extreme care to disguise what they wish to conceal. It would have been no matter to Weichmann whether or not they were buying or selling a farm. It needed no excuse, it needed no concealment, it needed no explanation, if it had been true. It is not likely it had any truth in it; but the lines they were drawing were for another purpose.

This, you will note, was in December, 1864. Now, let us look at another matter which soon followed, and which is a very important matter. I read from the testimony of Mr. Dunn, of Adams Express office:

"I did not fix the date; I only said that he was in our service in that office close in the neighborhood of two weeks. It won't vary more than a day or two of that one way or the other."

We had already proved by the cashier, you remember that Surratt went to the express office on the 30th of December, 1864.

"At the end of two weeks he came into my office, and applied to me for a leave of absence. I expressed my astonishment that he should apply so soon after taking his position, and he gave as a reason that his mother was going down to Prince George's, and he wanted to accompany her as her protector."

That was not any more true than the story about the purchase of Dr. Mudd's farm, and it was told for the sake of concealment.

"I told him that I could not consent to give him the leave of absence he wanted; that he had been there but a short time. He left the office, and went back to his work. The next morning a lady called in the office. She introduced herself as Mrs. Surratt, the mother of the young man of that name in my employ. She asked that he might have a leave of absence to accompany her to Prince George's county, where she had urgent business. I said I had no reason to change my mind; I had answered her son's application the day before, and I could not give my consent. She still urged her application, and I told her it was impossible for me to yield;

that her son could go without my consent, if she and he so determined; but if he did, he could not return to that office. She bade me good morning. He left the office the same day for good."

Now, let me show you a little thing in this connection; and my friend Mr. Merrick will understand what I mean by chains of evidence. There is a little piece of paper here found in Booth's pocket, you remember, which is in evidence before you. "J. Harrison Surratt"—his card, in his handwriting—"J. Harrison Surratt. I tried to get leave but could not succeed." So he took it and he wrote immediately to Booth. That is not a "magic chain," my friend.

Now, I call your attention, gentlemen, in this connection, to the testimony of Mr. Martin, of New York. He was very anxious to have it appear in his testimony that he went to Richmond, at the time he went, on business, and that he went with the knowledge of the President of the United States. He had a right to give that statement, because the mere fact seemed to compromise him, and he gave it on the stand, as you remember. He was down at Port Tobacco on his way to Richmond. It was in connection with getting out cotton. You remember there was a time in the progress of the war in which it was thought wise by some of the members of the Government to get out all the cotton and tobacco that could be obtained from the South. I believe the President entertained that view. This gentleman says, that although the President did not give him any written permission, he gave him to understand that he did not object if they could get out these things from the Confederacy without sending in supplies, but by giving money. I believe that the military men generally, and General Grant very particularly, were especially hostile to any of this trade existing between the two parts of the country, thinking it tended to retard the progress of our arms. Mr. Martin was down there, and let us see what he says:

"While in Port Tobacco, I remained for ten days, in order to get an opportunity to cross the river. I employed a man by the name of Andrew Atzerodt, and paid him to make some arrangements for

me to cross the river. I heard his name, and recollect asking him once if it was a Russian name. He tried to make arrangements for me to cross, and went down the river several times. I paid him for his trouble, and finally abandoned the idea and left there. I did not cross there at all. Saw Surratt there on one occasion. Had no particular conversation with him. I was introduced to him. He did not refer to his business, and I do not think I did to mine. On one evening after dark a man told me that a party was just about to cross over. I said I would like to be introduced to him. He said he would do so. In probably fifteen or twenty minutes he came in and said he was mistaken; that they were not going to cross. During the evening I was introduced to Surratt. No particular conversation passed between us. I may have told him I was going to cross the river. I think I did. I remained that night. The next day when he came in to supper he had on his leggings. I asked him if he was going. He said he was going back to Washington; that he was employed in Adams Express office; that he had three days' leave of absence; that his time was nearly expired, and that it was necessary for him to start back that night."

In all of which there was not a word of truth, as you know. He never had any leave of absence of any kind; and he told that story for the purpose of concealment, as people will when they are engaged in a wrong; and the pains they take is often one of the means of their detection.

"I am not positive I did not see him after this conversation at the supper table, and have not seen him since till I saw him here. Saw Atzerodt afterwards. Remained two or three days and tried to get across. I saw him there all the time I was there."

"The night Surratt left there was losing confidence in Atzerodt. I thought, although I had been paying him tolerably liberally, that he had been throwing off on me. I stayed up pretty late that night. He came to the hotel about eleven o'clock. I accused him of intending to cross over that night with other parties; told him I had been paying him all that he asked, and that I must cross by the first boat. He denied that anybody was going to cross that night. I reiterated the charge I had made of duplicity upon his part. He then made this explanation: He said no one was going to cross that night, but on Wednesday nights a large party would cross of ten or twelve persons; that he had been engaged that day in buying boats; that they were going to have relays of horses on the road between Port Tobacco and Washington. Said I, 'What does this mean?' He said he could not tell. After a moment I said I supposed that Confederate officers were to escape from prison, and that he had made arrangements to cross them over into Virginia. He said 'Yes, and I am going to get well paid for it.'"

There was no truth in that. What do you suppose was the purpose of those relays of horses? What do you suppose Surratt came back to the city of Washington for in the night? To Adams Express? He never had had any leave of absence from there, and he never went back there. He told Booth he could not get leave, and he did not get it.

What is next in the order of dates? There is a power of logic in dates you cannot resist. People would like to resist it if they could, but they cannot. When the sun rises in the east today, and goes over and sets in the west tonight, as it has rolled over it has stamped a record which no crime can ever wipe out. Many men would like to erase it, or change some figures in it, but when it goes down in the night, it stamps it eternally; there is no changing it. Now let us see, in the order of dates, what next occurs. I hold here the register of the Maltby House, in Baltimore. On the 21st day of that same month, you will see here entered "Louis J. Weichmann," and "J. Harrison Surratt, Washington, D. C.," room 127; both in the same room. There it is [pointing to the entry], both names in their own handwriting, written on that day in Baltimore,—“Weichmann,” “Surratt”—within three or four days after Surratt left Port Tobacco. Now, what does all this mean? There is nothing very strange in the fact that Weichmann and Surratt went to Baltimore and registered their names and stayed in the same room; but it is one of those little links in a chain which binds truth to truth; one of those things which prove what I have already said, that every truth in the universe is consistent and in harmony with every other truth. Now let us see what is the next truth. I read from Weichmann's testimony:

“Look at the book now shown you (book exhibited), and tell the jury what book it is.

“This is the register of the Maltby House, Baltimore, Maryland.”

“Please look under the date of that register of January 21, 1865, and state what you find there.”

And there he found the names which I have just read.

“I find my own name and the name of J. Harrison Surratt registered there on the 21st of January, 1865, as occupying a room,

No. 127. Those names were entered on that day by me and Surratt. We reached Baltimore on the evening of the 21st of January. On the morning of the 22d Surratt took a carriage and said that he had \$300 in his possession, and that he was going to see some gentlemen on private business, and that he did not want me along."

He had not got his three hundred dollars from Adams Express. He had not any of it yet. He had three hundred dollars with him, and he took a private carriage and went to see somebody that he did not want Weichmann to know. Now, let us see who that somebody was. We asked Weichmann if he knew that Payne was there then. No; he had never seen him. He was asked whether he knew that he was boarding there then. No; he did not know that. Somebody else did, though. I read you now from the testimony of Mrs. Mary Branson, a widow woman who came upon that stand from Baltimore:

"In 1865 I lived at No. 16 Eutaw street, Baltimore. In January, 1865, and for some time after that, Payne boarded at my house."

There is another link in this chain, and it is not a "magic chain." He was boarding there; and then he came after that to Mrs. Surratt's house, and this meeting with him in Baltimore was for something. I do not know what it was for; I do not undertake to say; I am going to leave it to you to say what you think it was about. This is the Payne, who was one of the conspirators; the Payne, who attempted to assassinate Secretary Seward; the Payne who was taken in Mrs. Surratt's house afterward. I next read in this same line of dates, from Weichmann's testimony:

"Surratt did not name then, or at any subsequent time, the name of the person who kept the house where he went. I returned home that evening; whether he returned with me or not I do not know, but it is my impression that he did not. I think I left him in Baltimore. Surratt and I were so friendly and so intimate with one another that we occupied the same room and bed. I met Atzerodt about four weeks after Surratt's first introduction to Booth, and about a week or ten days after Surratt returned from the country, in the early part of January, 1865, from Port Tobacco."

That was the time when Mr. Martin speaks of seeing him at Port Tobacco.

"After he returned from Port Tobacco about a week or ten days, in the latter part of January, I met Atzerodt in Mrs. Surratt's parlor; he was introduced to me by John Surratt."

Surratt had met him in Port Tobacco when Mr. Martin saw him with him about the 10th or 12th of January. In a few days after that he came up to Washington, came to Mrs. Surratt's house, and Weichmann was introduced to him by Surratt himself in the parlor. I now read from the testimony of the same witness:

"I saw him very frequently there between the time of his first coming there and up to the time of the assassination; perhaps he visited there altogether twenty times. I generally met him in the parlor on my return from work, between four and five or five and six o'clock. He was doing nothing in particular that I know of, except talking with Surratt. Booth came there very frequently. Remember of Surratt's going to New York in the early part of February."

This is now coming to the next month. We have traced him through January, and we now come to February:

"He did not state what he went for, but he did state he saw there John Wilkes Booth. Said Booth had a very fine parlor, and that he had been introduced to Edwin Booth. I met Payne at Mrs. Surratt's house in the latter part of February, 1865, for the first time."

He left Baltimore, where he was boarding; came down then to Washington; and it was not necessary for Surratt to go to Baltimore any more to see him, and it does not appear that he ever did go to Baltimore again.

"I met Payne in Mrs. Surratt's house in the latter part of February, 1865, for the first time. I was seated in Mrs. Surratt's parlor, one evening, when I heard the door bell ring. I went to the door. On opening it I saw standing there a man, tall, with very black hair, very black eyes, and ruddy countenance. He asked me if Mr. Surratt was at home. I said he was not. Then he asked me if Mrs. Surratt was at home. I said she was. He then expressed a desire to see Mrs. Surratt. I inquired his name, and he said Mr. Wood. I went into the parlor and told Mrs. Surratt that a gentleman by the name of Mr. Wood was at the door who wished to

see her. She requested me to introduce him. I did introduce him to Mrs. Surratt and the rest in the parlor as Mr. Wood. I had never met him before this, and I did not introduce him to Mrs. Surratt of my own accord. I never saw the man before.

"Payne approached Mrs. Surratt and talked to her. I do not know what he said. She came to me in a few moments and said 'that this gentleman would like to have some supper, and as the dining-room below was disarranged, she would be very much obliged to me if I would take supper up to him in my own room.' I said 'yes,' and I did take supper on a waiter to him in my own room."

You notice, gentlemen, that the first time Payne ever comes to this house, he is put up in a private room and supper taken to him on the order of Mrs. Surratt; and this is in February, 1865, after he had left Mrs. Branson's, in Baltimore. I am taking these events in their order of time, because I think that is the natural way. I think it will help you to get to a just estimate of the truth of this evidence far better than it would if I skipped about and took it in any other way than in the order of time:

"I sat down there while he was eating supper and made some inquiries of him, asking him where he was from, etc. He said Baltimore. 'Any business there?' said I. He said, 'I am a clerk in the china store of Mr. Parr.' He ate his supper and then said he would like to retire. He slept in the attic. He did not then, nor did he ever, sleep in my room. Did not see him the next morning. When I arose, he was gone. Saw Payne the next time on the evening of the 13th of March, 1865. As luck would have it, I was again sitting in the parlor when the bell rang. I again went to the door. I met the same man whom I had met three weeks before. His former visit, however, had produced so little impression on me that I had forgotten him. I asked him his name. He said, 'My name is Mr. Payne.' He again asked for Mr. Surratt, but Mr. Surratt was not at home that evening. I took him into the parlor, where were Mrs. Surratt and the ladies, and said, 'This is Mr. Payne.' They all recognized him and sat down and commenced conversation. In the course of the conversation one of the young ladies called him Mr. Wood, and then I recollected that on the previous occasion he had given the name of Wood. On this occasion he was no longer a clerk in a china store, but he represented himself as a Baptist preacher. He wore a suit of gray clothes and a black necktie. His baggage consisted of two linen shirts and a linen coat. The following day—I believe it was the afternoon—Surratt had returned. He was lying on the bed at the time. I was sitting at my table writing. Payne walks in, looks at Surratt, and says, 'Is this Mr. Surratt?' I said, 'It is.' He then looked at

me, and immediately observed, 'I would like to talk privately to Mr. Surratt.' I then got up and went out of the room, as any gentleman would have done. The following day, 15th March, on returning to my room from my work, I found a false moustache on my table. Not thinking much about it, I threw it into a toilet box that was there. From the appearance of things around my room I knew John Surratt was at home."

Surratt was his roommate, you know.

"I then went into the back attic, and just as I opened the door I saw Surratt and Payne seated on the bed, surrounded by spurs, bowie knives and revolvers. They instantly threw out their hands as if they would like to conceal them. When they saw it was me they regained their equanimity. There were on the bed eight spurs—bran new spurs—and two revolvers. There were two revolvers, however, and two bowie knives. When I went down to dinner I walked into the parlor and told Mrs. Surratt that I had seen John and Payne fencing with those things here, and added, 'Mrs. Surratt, I do not like this.' I told her I had seen them on the bed playing with those toys. She told me that I should not think anything of it; that I knew John was in the habit of riding into the country, and that he had to have these things as a means of protection. We went down to dinner. The same evening Surratt showed me a ten-dollar ticket for a private box at the theater. I wrested the ticket from him, and told him I was going to the theater. 'No,' said he, 'you are not. I don't want you to go to the theater this evening for private reasons.' He then struck me in the pit of the stomach, and took the ticket away from me again. He was very anxious that evening to take the smallest ladies in the house."

Then he goes on to tell whom Surratt took.

"They went to Ford's theater. That night about eleven o'clock, as I was lying in my bed—I had retired—Surratt and Payne came into the room. Surratt took a pack of playing-cards which were on the mantel of my room, when they both left, and remained out all night. A few days afterward, in conversation with a young man named Brophy, Surratt stated that he had spent the other night, meaning the 15th of March, with a party of sociables at Gautier's saloon, and that he would like to introduce us, but it was a private club or something to that effect.

"I went down the street with Surratt in the evening of 3rd March. At that time there was a good deal of serenading around town on account of the proposed inauguration of the President on the following day. After a while Surratt left me, and I went to hear the music. Surratt left me on Pennsylvania avenue near Eighth street. When I returned to the house of Mrs. Surratt, saw John Wilkes Booth and John H. Surratt in the parlor talking together. I pro-

posed that we should walk up to the Capitol. Congress was at that time in session. Three of us did go—Surratt, Booth and myself. When we were returning from the Capitol, Surratt and I left Booth at the corner of Sixth street and Pennsylvania avenue. Saw Booth the next evening of the 4th, at Mrs. Surratt's. He was in the parlor then. I did not see him during the day. John Surratt was at home that evening. He had been riding round town all day with the procession; he was on horseback. Did not see Herold that evening. Booth played at Ford's theater on the 18th March. He took the part of Pescara, in the play of 'The Apostate.' Surratt invited me to go to the theater that evening with him. I at first refused, but finally consented. He showed me a pass for two, signed by J. Wilkes Booth. As we went down Seventh street, near the corner of Seventh street and Pennsylvania avenue, we met Atzerodt. He was also going to the theater. At the theater we met David E. Herold and Mr. John T. Holahan, a fellow-boarder at Mrs. Surratt's.

This, as you see, when he was playing "The Apostate" at this theatre, was less than a month before in a greater drama he played apostate, traitor, assassin, murderer. I next call your attention to the testimony of a young lady, Miss Fitzpatrick, whom we put upon the stand, who was a boarder at that house—a young girl who did not seem to remember a great deal, but she did remember some things of very grave importance. She says she was living at Mrs. Surratt's house; that she knew George A. Atzerodt, but did not know him by that name.

"I knew him by the name of 'Port Tobacco.' I met him at Mrs. Surratt's. I think I have seen him there more than once. Remember he stayed there one night. Did not know a man by the name of Lewis Payne, who I saw before the military commission. Did not know him by that name; knew him by the name of Mr. Wood. Met him at Mrs. Surratt's also."

She says she recognized him at the military trial as the man she had seen at the house.

"The last time I saw Mr. Surratt was two weeks before the assassination. During these visits by Atzerodt and Payne to Booth, saw John at the house, but never heard them conversing together. In the month of March I went to Ford's theater with Mr. Surratt, Mr. Wood and Miss Dean. Mr. Booth came there and spoke to Mr. Surratt. They both stepped outside the box, and stood there at the door. Could not hear what they said. I was not paying attention; they were conversing together."

Referring to the Herndon House, the witness says:

"I remember passing with Mrs. Surratt; I do not know what month it was, in company with Mr. Weichmann and Miss Jenkins."

You will observe, gentlemen, that this young girl, in both these particulars, both about the theatre and about the Herndon House, quite unconsciously and unsuspectingly confirms Mr. Weichmann expressly in these respects.

"When we got to the Herndon House, Mrs. Surratt went in; the others of us walked up the street a little ways."

This is the Herndon House, where I shall show you presently, by the positive evidence of Mrs. Murray and other witnesses, Mrs. Surratt went to get the private boarding house for Payne to stay, where she did get it, and where he did stay. I now turn your attention to another piece of evidence in connection with this. Payne was secreted at the Herndon House, where Mrs. Surratt went to provide a room for him; and this is another of those striking pieces of evidence which will always crop out in trials of this kind. It is a curious thing. In this same month, at this same time, Booth is in the city of New York, when arrangements are being made by Mrs. Surratt to secrete Payne at the Herndon House—the man who was in delicate health, and who would take his meals in his room. Now, let us see what occurred. Here is a telegram, the original, in the handwriting of J. Wilkes Booth himself, sent from New York on the 3rd of March, 1865, and it reads as follows:

"To — Wickman, Esq.,

"541 H street, Washington, D. C.:

"Tell John to telegraph number and street at once.

"J. Booth."

"Tell John to telegraph number and street at once." Why did not J. Booth telegraph to John? It is merely one of those modes of trying to conceal, feeling that he was in a criminal plot and wanting to take roundabout ways to accomplish the end. Why did he not telegraph to John? Why did he want

it to go through Weichmann? He mentioned John's name, knowing that Weichmann, his roommate, will show the telegram to John, and therefore he says to Weichmann, "Tell John to telegraph number and street at once." What does Weichmann do? He does tell John; and now let us see what occurs. He takes this telegram to John, finding it was something he did not understand. I read:

"I told him I thought it was intended for him. I asked him what number and street were meant. (The telegram reads, 'Telegraph number and street at once.') He says, 'Don't be so damned inquisitive.'"

Was it anything very strange that he should ask the question? But John says, "Don't be so damned inquisitive." The number and street was the Herndon House, where Mrs. Surratt had arranged for the room with Mrs. Murray. Booth is in New York, and wants to communicate with Payne. Therefore he wants John to telegraph the number and street at once, and when Weichmann gives it to John and asks him what it means, the reply is "Don't be so damned inquisitive."

"That same evening he asked me to walk down the street with him. We went as far as Tenth and F, when he met a Miss Anna Ward; he then walked back from Tenth and F streets to Ninth and F streets with me, and went into the Herndon House and called for Mrs. Murray."

That was after he got the telegram to "telegraph number and street at once."

"I went with him. Mrs. Murray did not understand him; then Surratt said, 'Perhaps Miss Anna Ward has spoken to you about this room; did she not speak to you about engaging a room for a delicate gentleman who was to have his meals sent up to his room, and that he wanted the room for the following Monday, which was the 27th of March, 1865?' Mrs. Murray recollected, and said that a room had been engaged. The name of the party for whom the room was engaged was not mentioned by myself, by Mrs. Murray, or by John Surratt."

Now, you understand that mystery. You understood it as the testimony went along. I only now bring it together in the order of its date. Mrs. Surratt had been and engaged the

room, and this innocent girl, Honora, was along at the time, and Weichmann was along, as she swears; and then John goes there to talk to Mrs. Murray about the room; and then Payne is put there; and that is the room to be telegraphed about "number and street at once," about which John told Weichmann not to be "so damned inquisitive."

"This was on the 23rd of March."

"On 25th of March, as I went to breakfast and looked out of the dining-room window, I saw John Surratt, his mother, and Mrs. Slater, who had been at the house previously, in a carriage containing four seats, to which were attached a pair of white horses. The three went away together about eight o'clock in the morning. I next saw Mrs. Surratt the same evening in her house."

This, you will note, is the 25th of March, 1865.

"She returned alone in the Port Tobacco stage—the stage that runs from Bryantown or Port Tobacco to Washington, and delivers passengers at the Pennsylvania House. Mrs. Slater and John Surratt did not return with her. I asked her where John had gone. She said he had gone to Richmond, with Mrs. Slater, to get a clerkship."

All manner of excuses, you will notice throughout are given—quite unnecessary excuses, such as are always given to cover up something; excuses about the farm; excuses such as I have read; an excuse now why he had gone to Richmond. You will see them all through constantly given. They would not be given except for concealment. Presently you will see that John writes a letter to this poor old Brooke Stabler—this brokendown keeper of livery—telling him that he does not know how long he will be gone, for he has woman on the brain. If he had had "woman on the brain," do you think he would have been very likely to make that old man a confidante of his loves? He did it to conceal even from him what he was about. Then you will remember that those horses came back.

"After the 27th—do not remember the particular evening—Anna Surratt, Miss Jenkins, Miss Fitzpatrick, Mrs. Surratt and I had been to St. Patrick's church, on the corner of Tenth and F streets. On returning she stopped at the Herndon House, at the corner of

Ninth and F streets. She went into the Herndon House, and said that she was going in there to see Payne. We walked down Ninth street to E—the party did—and down E to Tenth; and then returned to the corner of Ninth and F, and met Mrs. Surratt just as she was coming out of the Herndon House, and went home with us. During that week I was going down Seventh street, and again near Seventh street and Pennsylvania avenue I met Atzerodt. Asked Atzerodt where he was going. He replied, to see Payne. Then I inquired, 'Is it Payne who is stopping at the Herndon House?' His answer was, 'Yes.' I had always been curious to know who that man was who was stopping there. When I mentioned to her, after reaching home, that the man Payne, who had been boarding at her house was at the Herndon House, she wanted to know how I knew it. I just told her that Atzerodt told me. She appeared angry that Atzerodt should have said so to me. On the first of April, in the morning, when I left the house, she was sitting at the breakfast table, and when I returned in the evening she was not at home. She came home a short time afterwards, in a buggy, driven by her brother, Mr. Jenkins. She said she had been to Surrattsville. Saw Atzerodt at Mrs. Surratt's house on the 2d of April. She had again sent me, on the morning of the 2d of April, to the National Hotel to see Booth, and if he was not there to go and see Atzerodt, and tell either of them that she wanted to see him that morning. I went to the National Hotel, but Booth was not there. I then went to the Pennsylvania House, and right in front of the Pennsylvania House I saw Atzerodt standing and holding by the bridle two horses; one was a very small one, and the other a very large horse, blind of one eye. Said I to him, 'Whose horses are those?' He replied, 'One is mine and the other is Booth's.' I then communicated my message to him, and he requested me to get on one of the horses and ride back with him. I refused, stating that I wished to go to church. He then said he would go to church with me. Then I mounted the horse, and Atzerodt and I rode to Mrs. Surratt's house. Atzerodt got off and went in to Mrs. Surratt's, and I remained outside part of the time, taking care of the horses. That same afternoon Mrs. Surratt said to me that Mr. Jenkins, her brother, would like to return to the country, and that she would be much obliged to me if I would go to the Pennsylvania House and see Atzerodt, and say to him that he would oblige her very much by letting Mr. Jenkins have one of John's horses—meaning her son's horses. I went down to the Pennsylvania House that afternoon with Mr. Jenkins, and I did ask Atzerodt for one of these horses for Mr. Jenkins, stating to him my message as I had received it. His reply was, that before he could loan Mr. Jenkins one of the horses he would have to see Mr. Payne about it. I then said to him: 'What has Payne to do with the horses? You have said that one is yours, that another is Booth's, and Mrs. Surratt says that the horses are John's.' John Surratt himself had told me that they were his, and had shown me at one time a receipt for the livery of the same two horses, the bill amounting to \$30. His an-

swer was that Payne had a heap to do with them. Mr. Jenkins, Atzerodt and myself then walked up to the corner of Ninth and F streets, and Atzerodt requested us to remain outside and he would go in and see about the horses."

Now, gentlemen, you will note this fact. They put Mr. Jenkins upon the stand, and did Mr. Jenkins deny this?

"What house was that?" "The Herndon House. He told us to remain outside on the pavement. Mr. Jenkins and I remained on the pavement for about twenty minutes. Atzerodt came out, and he told us that Mr. Payne would not consent to the loan of those horses."

We see where Payne is, pretty openly, by this time—this sick man, who was to have his meals in a private room!

"I returned to Mrs. Surratt's house, and told her what Atzerodt had said. She said she thought it was very unkind of Mr. Atzerodt; that she had been his friend, and had loaned him the last five dollars out of her pocket. I didn't get the horse. Mr. Jenkins walked home the next morning, I believe. On the 3d of April, after the excitement and noise of the day, I was seated in Mrs. Surratt's parlor in the evening, on the sofa, when, about half-past six o'clock, John Surratt walked into the room. He was very neatly dressed. He had on a new pair of pants. I asked him where he had been; his answer was, to Richmond. I then said, 'Richmond is evacuated; did you not hear the news?' 'No, it is not,' he said; 'I saw Benjamin and Davis in Richmond, and they told me it would not be evacuated.' Mrs. Surratt was in the room at this time. She merely bade him good evening. He went up into my room and put on some clean clothes. He went up before me; I went up a few minutes afterwards; think he called me upstairs. He did not say very much; he said that he wanted to exchange forty dollars in gold. He did exchange this forty dollars in gold for forty dollars in greenbacks. He showed me in the room nine or eleven twenty-dollar gold pieces, and fifty dollars in greenbacks. I did not ask him where he got it; I expressed a sort of surprise. He said that he had an account in the Bank of Washington, but he did not say that he had gotten this money from the Bank of Washington. He always appeared to have plenty of money in his pockets—five dollars and ten dollars. He seemed to be always well supplied."

And yet you see he was a young man without any occupation and without any means; his mother a poor woman, keeping a boarding house in the city of Washington. I now turn

your attention to the testimony of this old man Brooke Stabler, coming in with these various dates:

"From the first day of January until the first of June, 1865, I was taking charge of a livery-stable. John C. Howard's, on G street. Know John Wilkes Booth, John H. Surratt, George A. Atzerodt. Saw them at our stable often together and separately.

"Surratt put his horses in my charge to be taken care of, to be fed and watered. They were bay horses. One was an ordinary horse; the other was a rather fine horse; saddle horses. His direction was that he wanted them taken care of in the best manner I could. That they were not to be used, except by his order. His directions were that Booth, and no one else, was to have his horses, but that Booth could get them at any time."

I now come to the letter which Surratt wrote back to Stabler after he left with his horses on the 25th of March and went off with this woman, Mrs. Slater or Mrs. Brown; sometimes I believe she went by one name and sometimes by the other. This is the letter that he wrote back, having taken the horses, as you remember, on the 25th of March:

"March 26, 1865.

"Mr. Brooks: As business will detain me for a few days in the country I thought I would send your team back. Mr. Bearer will deliver in safety and pay the hire on it. If Mr. Booth, my friend, should want my horses, let him have them, but no one else. If you should want any money on them he will let you have it. I should have liked to have kept the team for several days, but it is too expensive, especially as I have woman on the brain and may be away for a week or so.

Yours, respectfully,

"J. Harrison Surratt."

He had "woman on the brain," had he? Was that what he went down there for? And was this poor old Stabler the man to whom he wished to communicate his amour? Do you believe that is so, or was this letter for a mere blind? "I should like to have kept the team," but he could not; it was expensive, "especially as I have woman on the brain and may be away for a week or two." He had something else on the brain, that was put on his brain at the time, or at a little before the time, he wrote this card; "I tried to get leave, but could not succeed." But he took his leave and he never got

a cent of the money that was due to him; he had not a cent of resources in the world, and his mother was a poor woman, as the counsel tells you, in very straitened circumstances, as she undoubtedly was. Where did he get his money? Where did he buy his horses? Do you suppose the "woman on the brain" gave him any money? He says that is "expensive." It is apt to be. From what source did he get his money, and how did he buy his horses? How could he have them kept at this expense? "If Mr. Booth, my friend, should want my horses, let him have them, but no one else." He says he often saw Surratt ride out.

"I have seen Surratt ride out with Booth, and I have seen him ride out with Atzerodt. I have seen Booth, Atzerodt and Herold at the stables with Surratt. Atzerodt told me that he had a letter in his hand from Surratt, but that he would not let me see it at all. He opened it, and the concluding paragraph I read. He told me that he would not show me the letter—the body of it—but that he would show me the latter part of it. He stated that the letter was dated in Richmond, and that he had understood that the detectives were after him and that he was making his way North as fast as he could."

I read now this other order of which I spoke:

"Mr. Howard will please let the bearer, Mr. Atzerodt, have my horse whenever he wishes to ride; also my leggings and gloves; and oblige yours, etc., J. H. Surratt,

"541 H street, between Sixth and Seventh streets.
"February 22, 1867."

This is the note written by Surratt to Brooke Stabler, not only to let Booth have his horses in the other note, but also to let Atzerodt likewise have his horse, and likewise his leggings and his gloves.

I turn now to the testimony of James W. Pumphrey:

"John Wilkes Booth came to my stable one day for a saddle-horse; he asked for the proprietor; I stepped up and told him I was the man; he said he wanted a saddle-horse to ride for a few hours; I cannot tell the exact day that he came there; I did not know at the time it was Booth, but found out that it was after talking with him for a short while; he said he wanted a saddle-horse to take a few hours' ride in the country; I told him I could let him have one; he said he did not wish any but a good one; I told him

I had a very good saddle-horse, I thought; he then said, 'I wish you would have him saddled;' I ordered him saddled, and then said to him, 'You are a stranger to me, and it is always customary with me when I hire a horse to a stranger to have him give me some security or some satisfactory reference.' Surratt said he knew him; that it was Mr. Booth, and he would take good care of the horse; I cannot now tell whether the prisoner came over and said this to me or stood on the opposite side of the street and hallooed across. Have known prisoner a great many years. He said he would see me paid for it; that he was going to take a ride with Mr. Booth. I went in and ordered the horse to be saddled and brought out; there were some gentlemen sitting in front of my stable at the time; who they were I do not know. It was a light sorrel; when I came out with the horse saddled, he was gone; I asked some of them out at the door where he went? They said they thought he went to the Pennsylvania House; the boy stood at the door with the horse, and I stood there watching for him; I saw him come out of the Pennsylvania House; he came out alone, and came over and started off on the horse alone. Saw him on the 14th of April. He called at my stable that morning somewhere between eleven and one o'clock. I did not pay much attention to the time. He called for a saddle-horse, stating that he wanted to ride that afternoon. He expressed a desire to have the same horse that he had been in the habit of riding. I told him he was engaged, and therefore he could not have him. He wanted to know if I could not put the person off to whom I had engaged him, and let the man have the horse that I was to give him. I told him I could not do that. He then wanted me to give him a good one. I told him that the horse I was going to give him was a very good saddle-horse. I told him I thought so, and he would think so after he had ridden him. He says, 'Well, don't give me any but a good one.' I told him I wouldn't; that I would give him a little mare; that she was small, but a very good one."

Mr. Fletcher is called. He says he was at Naylor's stable on the 14th of April, 1865; that he saw Atzerodt and Herold at the stable, but not together, and that he saw Atzerodt first. This witness states, referring to occurrences on the night of the 14th of April:

"Atzerodt came after his horse about ten o'clock. I sent one of the boys down to the stable to get the horse ready for him. He afterwards wanted to know if I would not go and take a drink with him. I told him that I had no objection. He and I then went down to the Union Hotel and had a glass of ale. He asked me if I would have any more. I thanked him, but told him I would not take any more."

This was the night of the 14th, you will remember.

"Returning back to the stable, he said to me, 'If this thing happens tonight you will hear of a present.'"

That was what Atzerodt told the keeper of the stable from whom he obtained the horse. He could not keep it in. He is so full of it and so sure of it, that he says, when he is getting this horse and drinking with him and wanting to treat him over again, "If this thing happens tonight you will hear of a present."

"When he had mounted his horse I remarked to him, 'I would not like to ride that horse this time of the night; he looks too scarish'. Said he, 'He is good on a retreat.' Saw Herold again on the corner of Fourteenth street and the avenue. He was coming down the avenue from Fifteenth street. He was not riding very fast. It seems he knew me. I went up to him and demanded the horse. I think it must have been twelve minutes past ten o'clock. When I demanded the horse from Herold he paid no attention to me, but put spurs into the horse and went up Fourteenth street as fast as the horse could go. I kept sight of him until he turned east of F street. I then returned to the stable, saddled and bridled a horse, and started after him."

He afterward saw the horse at Major General Augur's headquarters, the horse having been caught in the night, after the murder.

Mr. Toffey says:

"On the night of the 14th, or the morning of the 15th of April last—it might have been a little after one—as I was going to the Lincoln Hospital, where I am on duty, I saw a dark-bay horse, with saddle and bridle on, standing at Lincoln Branch Barracks, about three-quarters of a mile east of the Capitol. The sweat was pouring off him, and had made a regular puddle on the ground. A sentinel at the hospital had stopped the horse. I put a guard round it, and kept it there until the cavalry picket was thrown out, when I reported the fact at the office of the picket, and was requested to take the horse down to the headquarters of the picket, at the Old Capitol Prison."

And this was the horse about which we have been speaking.

I now bring your attention to another kind of evidence; the testimony of Mr. Samuel A. Rainey. He says he lives in

Washington; has lived here for twenty years. His business is keeper of a livery stable. In answer to the question who took the livery stable with him in 1865, he says:

"Dr. Cleaver; his name is Wm. E. Cleaver, a veterinary surgeon. We continued in that business not quite a year. Remember seeing him there once or twice. Surratt came there on one occasion to get a horse; my partner hired the horse."

His partner, he says, was Cleaver. I now turn to the testimony of Dr. Cleaver:

"Have been a veterinary surgeon seventeen years in this city; kept a stable on B street; know J. Wilkes Booth and John H. Surratt. He came down to hire a horse of me at the time Booth kept his horse with me. I usually called him 'John,' and he called me 'Doc.' Booth first brought his horse to me to keep the 1st of January, 1865."

You will see importance in this date.

"The day we got the stable he brought a one-eyed bay horse first. About ten days afterwards he brought a light-bay horse, very light bay. Saw him and Surratt there together. The first time I saw Surratt there with Booth, Booth came, I think, and paid one or two weeks' livery; then, three or four days after, he came down and I hired him a horse to go into the country. He came and hired a horse two or three times. The next time Booth and Sam Arnold came there together. He got there about seven o'clock that evening; it was raining very hard; he came about three and ordered them."

Here is a fact that I pause to comment upon for a moment. They say because Cleaver has shown himself a man of violent passion in a certain way that he cannot tell the truth. I appeal to you as men of sense, to your experience, and ask you whether it is your experience that that fact ever changed a man's truthfulness so far as you know. My experience is that not even a man's getting drunk changes his truthfulness. A man may have a passion for liquor; a passion for other things. I have known some of the most honorable and truthful men, and you have, who were drunk three times a week, and whose word you would take for truth where anything or everything was at stake. But in this

case in the testimony of this man, as you will see going through, he gives the days and dates and particulars of the days, telling you how hard it was raining at this particular time, when this particular thing happened at this particular date. A record is kept here—here in the Smithsonian Institute and one other place in Washington—every hour in the day, from one year's end to another, of the state of the clouds, of the amount of rain that has fallen; whether it rains or is not raining; whether it is raining hard or not hard; and if he were not telling the truth it would have been the easiest thing in the world to contradict him, and prove that his testimony was false. He lays himself open in every way; and yet on not one single fact have they brought a witness to dispute him.

"I asked him if he was going to the country such a night as that. He said yes; he was going down to T B, to a dance party."

This was not "woman on the brain;" this was "a dance party." Always some reason given for whatever he was doing or wherever he was going.

"I told him it would have to be a fine dance party that would take me down there such a night as that. I asked him if he would go over to the Clarendon and get a drink. He said he thought he had had enough then. I thought so too. Booth had not come yet; I asked Surratt into the office to sit down. He came in and sat there some few minutes. He told me he was going down in the country to T B, to meet a party and help them across the river."

He had forgotten the "dance" then! At first he was going down to T. B. to a dance, but when he got into the office he was going down for another kind of dance—

"that he and Booth had some bloody work to do; that they were going to kill Abe Lincoln, the d—d old scoundrel; that he had ruined Maryland and the country. He said that if nobody did it he would do it himself, and pulled out a pistol and laid it on the desk." . . . "He said he represented two counties in Maryland."

Well, he was pretty tolerable drunk, I suppose, at this time, and he felt as if he could represent a dozen counties.

He was going to do a great many tremendous big things, and he pulled out his pistol just as he pulled it out on the ship when he thought he saw an American detective, and said that would settle him; and as he pulled it out afterwards, when he got near the coast of England and the thought was suggested to him that he might be arrested in England: he then said he would shoot down the first officer that arrested him. He pulled it out here when in the same state of mind and under the same feeling and threatened the great things he was going to do.

State whether the rain continued. "Yes, sir; very hard."

It was easy to show whether it did or not and that Cleaver was lying about this. If he had been, I guess it would have been known. Cleaver did not know that the record showed the fact about the rain when he testified here, I warrant you; he had no dream of it.

"Booth came about eight o'clock. Mr. Surratt chastised him for being so late—for keeping him waiting so long. I think he was going to hit him in the face with a glove or something of that kind—in joke, of course. He either hit at him or hit him, I do not know which."

I shall have occasion on another subject, and in another part of this case, to recur to Cleaver's testimony on another matter, to show you from this printed book how that testimony was brought out. Whatever abuse the other side may choose to heap upon Mr. Ashley or upon anybody else who got it out, certainly Cleaver did not deserve any abuse for the mode in which it came out, for from him it came out most reluctantly. He tried to keep it in. He was an Englishman. He was our enemy. He did not want to say a word about it. He told it in confidence to a fellow-prisoner and it was there found out, and a member of Congress indirectly getting hold of it let it be known to the district attorney. It was forced out of him by power—not willingly. He did not mean to say a word.

I now come to another piece of testimony, which is very remarkable, perhaps the most so of any in this case, when you take it in all its aspects and in all its fearful bearings, and when you consider how it comes out, how unwillingly and how reluctantly. I mean the testimony of John M. Lloyd. Mr. Bradley, the counsel, charged him with being likely in the conspiracy himself, as I understood him. He also charged him with being a drunkard. I believe he drinks; I have no doubt about that. He was not drunk when he gave his testimony; he was not drunk when the officers of justice went there after Booth and Herold had passed his house and got the arms which this prisoner himself had there secreted, and when he told them he had not seen Booth or Herold or anybody. He was not drunk; he lied to them; he says he lied to them. He says he knew Surratt and Mrs. Surratt; he was Mrs. Surratt's tenant. He knew it would involve her in difficulty, and he wanted to shield her. He did want to shield her, and when we got him upon the stand we had to handle him with a delicacy not common and a care that kept the mind alive, I can assure you, for he would have concealed from us every important fact in this case if he could. I believe no man rejoiced more at this murder than he; I believe that no man would have helped the murder quicker than he; and I agree with Mr. Bradley that he was a party knowing of this crime, and believing that something wicked and terrible was to be done, and he meant to conceal it. But his testimony is not the less strong upon that account. You saw how he tried to conceal it when he gave his testimony, and you will see now when I read it:

"I moved to Surrattsville about the last of December, 1864. I resided at Surrattsville up to October, 1865."

He is asked whether he knew Mrs. Surratt, and he says yes.

"I knew David E. Herold; he was at my house on several occasions; I first saw him, I think at Mr. Birch's sale; saw him several times afterwards at the conspiracy trial. Knew one George A. Atzerodt, not by that name until two weeks before the assassination; I used

to call him by the name of Israel. He came in there one morning with him, and laughingly stated something about somebody calling him 'Port Tobacco;' this is the only time I ever heard the name made use of. One morning, probably about five or six weeks before the assassination, Surratt and Atzerodt came to my house; Herold had been there the night before, and said that he was obliged to go to 'T B' that night; he stopped in there, and was playing cards; he played several games; the next morning Surratt and Atzerodt drove up."

You will note here that he said Herold had been here that night, and said he was obliged to go to T B. I shall bring in witnesses presently to show you what he did at T B, and what arms he had with him. I think you will remember something of it even before I come to it.

"About half an hour after that Surratt and Atzerodt left and went down the road, and I supposed in the direction of 'T B;' they all three returned together—Atzerodt, Herold and Surratt. There were several other persons besides them there at the time. I therefore paid no particular attention to them. They came in and took a drink, probably, and were playing cards, as well as I remember. After awhile Surratt called me into the front parlor, and said he wanted to speak to me. There I saw lying on the sofa what I supposed to be guns. They had covers on them. Besides these there were two or three other articles. One was a rope—a bundle of rope as big around, I suppose as my hat (a black felt hat of ordinary size). It was coiled rope. I should think from the size of the bundle that there was not more than eighteen or twenty feet in it. I took it to be an inch and a quarter rope. There was a monkey-wrench. He wished me to receive those things and to conceal the guns."

This is the prisoner a little while before this murder, and these (pointing to carbines placed in evidence) are the guns, the very guns.

"I objected to it, and told him I did not wish to have such things in the house at all. He assured me positively that there should be no danger from them. I still persisted in refusing to receive them, but finally, by assuring me most positively that there would be no danger in taking them, he induced me to receive them. He did not say what sort of guns they were, as well as I can remember. I told him there was no place about the premises to conceal such things at all, and that I did not wish to have them there. He told me then of a place where he knew it could be done. He then carried me up into a back room from the store room. Never been in that room before. I supposed the place was finally closed up. I

did not know that there was anything kept there at all. I tried on several occasions to get in there, to have it occupied as a servant's room; for persons passing backwards and forwards very frequently stopped there in the winter with servants and I had no place to put them, but had to let them lie down stairs on my lounge."

He says he had never seen this place before, but Surratt knew it, and Surratt took him to this secret place with the guns, the cartridge box, and the ammunition which I shall presently show you.

"I put them in an opening between the joists of the second story of the main building. There was a cartridge-box brought there. Whether it was full of ammunition or not I am not able to say. I did not examine anything at all. I left the monkey-wrench and rope at Surrattsville when I moved away. What has become of them I cannot say. I deposited them in the store-room. The store-room is a place where we kept barrels of liquor and such like. It was not the same place where the guns were put. Surratt told me that he only wanted me to keep them two or three days, and that he would take them away at the end of that time. On that condition I consented, and that alone."

I will take Lloyd's own testimony here, and I will ask you to say if he did not know there was mischief brewing, for which these arms were concealed; have you any doubt about that? I take what Mr. Bradley says on that, and I admit what he says, that Lloyd knew all about it, or enough about it to have put him on his guard, and enough about it to have made him guilty.

"Do not know of anything particular happening after that, except that they engaged in playing cards probably half an hour. I did not see them when they left. They all went out on the porch together as well as I remember; saw the prisoner two or three days after that, going down to Surrattsville, and I supposed at the time that he was going to take those things away, and I said nothing to him about them.

"He asked me if he could get his breakfast down there; told him I thought so—some ham and eggs; was on my way to Washington when I met him. He got his breakfast there, I think.

"Saw Surratt again after that on the 25th of March; about a week after that met him on the stage, about five miles this side of Surrattsville, returning to Washington while I was returning home; knew Mrs. Surratt and rented my house from her; saw her in Uniontown the Tuesday previous to the assassination. She was in

company with a young man whose name I did not know. Since have discovered his name to be Weichmann, in a buggy. She made use of a remark to me—called my attention to something that I couldn't understand. I do not wish to state one solitary word more than I am compelled to."

We called upon the court, and the court told the witness that he was compelled to answer, and he finally reluctantly answered. This question was put by the court:

"State what was said, as far as you recollect, whether you understood it or not." "She tried to draw my attention to something. She finally came out and asked me about some shooting-irons that were there."

This makes one feel very much as that prisoner did who got up the false alibi that I read to you about, who said that when the jury went out he felt such a chill come over him as he never had felt before. She finally came out and asked him about some shooting-irons that were there.

This was three days before the day of the murder—that fatal day. How did she know that her son had concealed those shooting-irons, now lying before you in that secret room, that even Lloyd had not known.

"As well as I recollect, in speaking of the shooting-irons, she told me to have them ready; that they would be called for or wanted soon, I forget now which. Either expression sounded to me as if it amounted to the same thing, for I was satisfied."

What was he satisfied about? He was satisfied that Mrs. Surratt, from whom he hired the tavern, knew about that secret room behind the joists, where her son had concealed those arms. Am I drawing a wrong inference from this evidence? Is it not a fair statement of it? What do you say about it? What will you say when you go before your God about it? What do you think about it now?

"When she made this remark, I told her that I was very uneasy about those things being there; that I had understood the house was going to be searched, and I did not want to have those things there; that I had a great notion to have them taken out and buried, or done something with."

Buried! as you bury a murdered corpse. Why buried, if they are innocent things?

"The conversation then dropped on that, and turned on John Surratt. I told her I had understood that the soldiers were after John to arrest him for going to Richmond; I had understood that he had gone there. She laughed very heartily at the idea of anybody going to Richmond and back again in six days and remarked that he must be a very smart man indeed to do it. That was about the substance of the conversation that passed between Mrs. Surratt and myself at that interview; it did not last longer than between five and ten minutes. She was there on the evening of the Friday of the assassination, I think."

Now we are down to the day of the murder. She comes there again, and what occurs? The evidence of the Tuesday's proceedings we have gone through with, let us see what she did then. He says he had been to Marlboro and returned.

"When I got home found a good many gentlemen there, some ten or twelve. Among others, Mrs. Surratt and this man Weichmann. When I drove up in my buggy to the back yard, Mrs. Surratt came out to meet me; she handed me a package."

And we traced the package; here it is. (Exhibiting the field-glass.) It was done up in paper.

"She handed me a package and told me, as well as I remember, to get the guns, or those things—I really forget now which, though my impression is that 'guns' was the expression she made use of—and a couple of bottles of whisky, and give them to whoever should call for them that night."

What are you going to do about that evidence, gentlemen? Can you brush it away? If so, when you come out I hope you will tell our fellow-citizens why; that you will explain it, and let it be known to the world. She tells him to have ready a couple of bottles of whisky and to "give them to whoever should call for them that night." What was expected "that night?" Why the guns; why the cart-ridge-box; why that field-glass taken by her from the city that day; why the bottles of whisky, to be called for that night? Who was to call for them that night? I go further

now, and show what became of the package she took from the buggy.

"I did not notice the package until probably an hour later or more. I thought of it and carried it up stairs, and it feeling rather light, my curiosity led me to open it to see what it contained. I read in printed letters on the front piece of it, 'field-glass.' These letters were on a small part of it."

His curiosity led him to see what it was, and he found what it was.

"I put it with the other things, with the gun and cartridge box."

The guns and the cartridge-box were up in that private, secret room, behind the joists, and between them and the plastering. He put the glass there that night:

"Herold was at my house about twelve o'clock that night."

A little after ten that night, as you remember, the murder was committed. Herold was there about twelve.

"The same person who was at our house on Tuesday. Who was in company with him at that time I do not know."

He did not know who this was. We could not get him to tell, and only by some dexterity were we able to get it out of him. He was determined he would not tell that that was Booth. And when he saw that the counsel were trying to make it appear that he was so far off that he could not hear the conversation, and therefore could not give any evidence of what was said, he was ready to put him as far off as he could. We will go on with what he says here:

"Herold said when he came into the house—when I opened the door—'Mr. Lloyd, for God's sake make haste and get those things.' He did not name what things they were."

Herold did not name the "things," but it seems Lloyd knew exactly what things they were, for Mrs. Surratt had been there a little while before, and told him to get those things and two bottles of whisky ready.

"I went up stairs and got one of the guns, the field-glass, and the cartridge box, which was all I could bring down at that time, and I

did not go back any more. Gave these things to Herold." Did you offer anything to the other person?" "Do not know whether the other person took anything or not; if he took anything at all, it was nothing more than a field-glass."

Then we had a great contest here about what could be told. Finally we asked him, "When did you first hear of the assassination?" He did not want to tell:

"I will state that at the time this man was speaking to me as to what had been done Herold was across the road. That is, as far as my memory serves me, I think he was; believe Herold was present when he told me his leg was broken. He asked me if there were any doctors in that neighborhood. I told him only one that I knew of, Dr. Hoxton, about a half mile from there, but that he did not practice. He told me so himself. He said he must try and find one somewhere. He was opposed to taking any gun, and opposed to Herold taking one because his leg was broken; there was no name given at all. I was close to him, but did not pay particular attention to him. He appeared to me as if he was drunk."

You see the great struggle—you will remember it—that we had to finally bring out from this reluctant witness that this was Booth; but we did get it.

"I do not remember that he said anything else. He may have done so, but if he did it has escaped my memory, except that portion that I was going to tell a while ago, but was stopped. The moon was up, but it appeared to me as if it had not been up very long." "When did you first hear of the assassination?"

Then objection was made by counsel in the most zealous way to my asking the question, "When did you first hear of the assassination;" and we had a long debate; the court ruled and my question was repeated.

"I cannot answer that question until this other is settled."

That is, the counsel and I had been debating, they struggling to keep him from answering the question, and the court told him it was to be answered; he said he could not answer it until the other was settled!

"You cannot say whether you heard of it a week afterwards, the day before, or that night. It might be the second time." "My question is not as to the second time. I ask you on your oath to

state when you first heard of this assassination." "If I answer that question it will come exactly in contact, in my opinion, with what has already been prohibited by the court."

This witness was very much afraid he should do something illegal in giving his testimony, so he gave his legal opinion on the subject, and he would not answer me, and I had to call upon the court, and the court directed him to answer.

"I now ask you when you first heard it?" "On that ground then I cannot answer."

I had a rough time, as you see.

"I do not ask you who stated it; I ask you when you first heard it?" "That is the question I am to answer; I cannot answer it." "You must answer that question, when you first heard the news of the assassination."

After the witness had given his legal opinion, and after having these various efforts made by counsel, finally, after a severe reprimand by the court, the witness draws it out, "I first heard it that night."

"One was before my house there. I do not know that both were. Herold, I think, was across at the stable. That is the time I heard it; think the man with a broken leg was too far from Herold to have Herold hear him.

"The man with a broken leg did not tell me directly what he did himself. The expression he made use of, as well as I remember, was that 'he' or 'they' had killed the President. I did not understand which it was, 'he' or 'they.'

"Am not certain, but I think it is possible that he might have made use of Secretary Seward's name. I think it was him who spoke of it, but I will not be altogether certain about it; never heard Atzerodt called very familiarly by any name, except on one occasion, when Surratt told me that some ladies had dubbed him 'Port Tobacco.'"

August 5.

Mr. Pierrepont. I proceed with the testimony of Lloyd, which was nearly closed when we adjourned on Saturday.

"You have stated that you knew Mrs. Surratt, and rented this house from her. I will ask if you saw her shortly before the assassination of the President; and, if so, when and where you saw her?" I do not wish to go into the examination of Mrs. Surratt,

as she is not here to answer before this tribunal. I took the paper off the package. My curiosity prompted me to open the cover of it." "What did you find when you removed the paper covering?" "I found an instrument a good deal like this. What Mrs. Surratt left there I gave to Herold; think Herold took it off. I did not go outside of the gate until Herold took the things. I think Herold took them out." Mrs. Surratt was alone when I first saw her; she met me alone near the wood pile. I said before the military commission that I was asked by one of them if I did not want to hear the news. I told him he might use his own pleasure about that; that I did not care anything about hearing it."

That was a strange thing; on that night, after the murder of the President, and when Booth and Herold were there, he says, "I did not care anything about hearing the news." Why not? For the same reason that the counsel stated the other day, he knew all about it; he expected such news.

"And then they told me that the President had been killed, or that 'we have killed the President.' Told the officer then that neither of these men had been there. I did not want to be drawn in as a witness in this affair at all."

Now, let us see what reason is given by this man, who is a tenant of Mrs. Surratt, who is in the house, to whom the guns had been given, who knew where they were secreted by this prisoner at the bar, who went with him and saw them secreted, who received this field-glass on that same day from Mrs. Surratt, and put it with them, and from whom he received on that day the injunction to have two bottles of whisky, and those shooting-irons and things ready, as they would soon be wanted. What is the reason that this man gives under oath here?

"I have not the least doubt I did do it. I did not want to be drawn in as a witness in the affair at all. I knew that Mrs. Surratt's name would be drawn in if anything was said, and I did not want to say anything about it."

That is the reason he gives you. He did know Mrs. Surratt's name would be drawn in; he knew that Mrs. Surratt's son and Herold had brought the arms there; he knew that Mrs. Surratt's son had secreted them in that secret room; he

knew that Mrs. Surratt had come there on the day of this murder, and told him to have those shooting-irons and those things ready, that they would soon be wanted, and likewise to have two bottles of whisky ready. Well, might he say, then, that "I knew Mrs. Surratt's name would be drawn in if any thing was said, and I did not want to say anything about it."

"It was about midnight. I think it was probably Herold himself roused me up hallooing about."

He says, in reply to a question from the court:

"I will explain: In case of going before a court to give testimony or anything of that kind, I cannot in justice to myself taste any liquor without possibly making me say something or use some expression that I would not wish to, or oftentimes making me forget things I do not wish to forget."

You will remember, gentlemen, the question I put to him. I asked him whether he had any liquor on board then, but counsel on the other side objected to it. They said you could tell as well as the witness could whether he had any liquor in him then. Yes, you could tell. You remember very well when he stood there on that stand, and you know whether he had any liquor in him or not; whether he was testifying like a sober man and a most reluctant witness as he was. You well remember it. At page 180 he says further:

"Herold went down below my house; he started alone, and the next morning came back with these carbines."

I am reading this, gentlemen, to show you the connection of Herold and John Surratt with these very guns and these weapons of death which were there concealed by this prisoner at the bar, brought there by Herold. I am going to show it to you.

"Did not see Herold bring them; knew nothing about the carbines or anything of the kind until my attention was called to them in the front room. Herold went down the night before, and the next morning came back, and when I came in I found the carbines in the room; who brought them I do not know; was invited into the room by

John Surratt; Herold told us in the barroom that he was obliged to go to T B *that night*. It was getting very late when he left. I told him that I had one spare bed, which he might occupy if he wished."

Now I am going to take him to T B, and bring up these arms here to this place, which this prisoner, in connection with Herold, concealed. Before doing that, however, I want to pass for one moment to the subject of this glass, to show how it got there—a fact in evidence about which there is no dispute. I read from Mr. Weichmann's testimony:

"On Friday morning I went to my office as usual; arrived there at 9 o'clock. This was Friday, the 14th of April. Was at the office until about half-past ten, when an order came from the Secretary of War to the effect that those clerks under his charge who desired to attend divine service that day might do so.

"This was Good Friday. I left the office and went directly to St. Matthew's church, at the corner of 15th and H streets. After service was over, about a quarter of one or one o'clock, perhaps, I went home to Mrs. Surratt's house. I got home at one o'clock or a little after one. I took some lunch, and then went up to my room and sat down and wrote a letter. About half-past two or twenty-five minutes after two, I heard a knock at my room door. In opening the door I saw Mrs. Surratt. She stated to me that she had received a letter from Mr. Charles Calvert about her property, and that it would be necessary for her to go into the country again and see Mr. Nothey, who owed her \$479, with interest on the same for thirteen years."

You will remember she had been there only the Tuesday before:

"She gave me a ten-dollar note with which to go and get a horse and buggy. As I went out the parlor door, John Wilkes Booth came in. He shook hands with me and then went into the parlor. I then went to Mr. Howard's stable and there saw Atzerodt, who was endeavoring to hire a horse. His request was not complied with. He could not get one. I asked what he wanted with a horse. 'Oh,' he says, 'I want to send off Payne.' I then went to the postoffice and dropped the letter I had written and returned to Mrs. Surratt's house with the buggy. I went up into my room for a minute or two, and as I passed the parlor door I saw Mrs. Surratt and Booth in conversation."

This was the day of the murder, gentlemen:

"Cannot state the precise hour. It was between twenty-five minutes past and twenty to twenty-five minutes to three. Booth was

standing with his back against the mantel-piece, with his arm resting on it, and Mrs. Surratt had her back towards him. I went down to the buggy, and Mrs. Surratt came down in a few moments and was just about getting into the buggy when she said, 'Wait, Mr. Weichmann; I must get those things of Booth's.' She went up stairs into the house, and came down with a package in her hand. It was a package wrapped up in brown paper, tied round with a string, I believe, and, to the best of my knowledge, about five or six inches in diameter. I did not see the contents of the package. It was put in the bottom of the buggy. Mrs. Surratt stated that it was brittle. She said even that it was glass, and was afraid of its being wet. I then helped her into the buggy, and we drove off. The buggy was halted once near a blacksmith's shop about three miles from Washington, on the road to Surrattsville. There were some pickets there, on the left-hand side of the road, near the blacksmith's shop. The soldiers were lolling on the grass, and the horses were grazing about. Mrs. Surratt had the buggy halted, and wanted to know how long those pickets would remain there. She was informed that they were withdrawn about eight o'clock. She said, 'I am glad to know it,' and drove off."

As you will remember, I read to you the other day the testimony of Mr. Lloyd, wherein he stated that this glass was brought there in the package, was put with the guns, and was taken away by Herold.

I now come back again to the subject of the guns and their being secreted there, being brought from T B by Herold, who met Surratt at this house, his own mother's house, and secreted the very guns which are here before your eyes, and which were the guns with which Booth and Herold fled the night after the murder was committed. I read from the testimony of Mr. Kaldenbach:

Know John M. Lloyd. Sometime in the spring of 1865 I found a firearm there; I lived there then; it was about the 25th of April, 1865, or somewhere thereabouts; found it in the partition between the plastering; it had a covering over it. It was between the dining-room, in the main house, and the kitchen, which was attached to the main building. It was right between the plastering in the partition wall. There were detectives there; am not certain what date it was; somewhere about the 25th of April. This detective was there on that night; he told me there was a firearm there, and said I must find it; this detective and myself went in search of it, and after searching for it for sometime I found it. I took a hatchet, knocked the plastering loose, and found it between the partitions; after I found it, I went for this detective before I removed it at all; he took

it in his possession and carried it off. His name was George Cottingham, a Government detective at that time stationed down there. I went to that particular place and found it by the direction of Mr. Lloyd."

I now read the testimony of Mr. Thompson; he tells you further about these arms:

"I lived in the spring of 1865 at T B; was keeping a hotel there, the 'T B Hotel.' Herold came there sometime in March; he brought with him a sword, a couple of carbines, and a couple of double-barrelled guns and a revolver. He came in a buggy. He put them in the barroom until the next morning. He told me he was going down the Patuxent river shooting ducks."

You will observe that all through, wherever a letter is written, wherever an act is done, an excuse is given for it always; some reason is given for it, as is always the case, as I have before stated, when an effort is being made to conceal crime. There was no truth in this statement, as you will see presently from the testimony.

"He said he expected John Surratt there. He came there about eight o'clock—our supper was over—and ordered supper. They had supper prepared for him, and he afterward went to bed. Surratt did not come there that night. The next morning he got up, took his guns, and came back towards Washington."

I now read from the testimony of Mr. William Norton, on the same subject of these guns.

"Lived in the month of April, 1865, at T B, Prince George county." "When did you see any arms?" "Saw some arms in the month of March; David Herold brought them there; some guns, two carbines, a pistol, a knife, ammunition, a rope, a wheel and a horse and buggy. About eight o'clock he took them out of his buggy and carried them into the barroom. He went away after breakfast and took the arms and ammunition with him."

Mr. Lloyd has told you which way he went and where he went.

"Herold asked me if Mr. Surratt had been there. I told him he had not. He said he expected he would be there. Surratt did not come that night."

Now we see how these carbines got to Lloyd's. He has told us that Herold came there that morning with them from T B,

and met Surratt at his house with them; that Surratt took him into the parlor where the guns lay, and told him where to conceal them. He took them there, reluctantly as he says, and did conceal them. Herold brought the guns; Surratt concealed the guns. And after the murder was committed Herold came there that very night, in company with Booth, and took one of the guns away, and it was subsequently taken from the barn in Virginia, where Booth was killed, and brought here, and is now before you. I understand my friends on the other side to have asked us in the progress of this cause to connect one thing with another; and they have frequently asked the court to strike out certain evidence because it was not connected. I think it will strike you that this is tolerably well connected. Herold is at a tavern at T B, a little below Surrattsville, with these guns. He expected to meet Surratt at T B that night, but he did not come. The next morning Herold takes the guns and goes up to Surrattsville and leaves them there in the parlor. Surratt calls in Lloyd, takes the guns, and hides them. Then, when the murder is committed, Herold goes there and gets the guns, and Mrs. Surratt, on the very night of the murder, takes this glass there, has it put with the guns, and tells Lloyd to have two bottles of whisky ready; that those shooting-irons will soon be wanted. Will you tell me, gentlemen of the jury, how Mrs. Surratt knew about those shooting-irons? She was not there when Herold brought them there, nor was she present when her son concealed them behind the plastering. Who told her about those guns? Will you answer that, gentlemen? How did Mrs. Surratt find out, on the day of the murder, when she took that field-glass there, that those concealed shooting-irons would be wanted soon? She was not there when Herold came and when her son John went into that secret room and hid them behind the plastering when Lloyd was so unwilling to have them hid. How did she find out, on the night of the murder, that her son had hid those "shooting-irons" there, and that they would be wanted that night? Does it need any answer? If it does, I will read to you the answer given by

one of their own witnesses from Prince George's county whom they themselves called, old Mr. Watson, a witness upon whom they rely. You will there see the reason that he gives. It is the true reason. There cannot be any doubt about that. It is a reason that will commend itself to everybody. He says:

"In this conversation I took sides with Mr. Bingham; I said I thought Mrs. Surratt was guilty, and I think so yet. In conversation with Mr. Tibbett I told him I believed she was guilty; and I think that every man"——

Mr. Merrick stopped him there, and thus prevented him from completing his answer. "I think that every man"——every man what? That every man who has heard this evidence knows and feels that Mrs. Surratt was guilty. How did she know of those arms concealed but from her son? Her son and Herold concealed them there together. Both met there on the same day. Herold expected to meet him at T B, but did not meet him there, and then he goes up to Surratts-ville the next morning and meets him; and Lloyd is called by Surratt, and he and Herold take those arms and hide them, and Mrs. Surratt knows all about it. Is not old Mr. Watson, who came down from that county, right, when he says on the stand, "I did say she was guilty, and I say so yet, and I told him I believed she was, and I think that every man"——. There Mr. Merrick stopped him. "Every man"——what? Every man who has heard this evidence knows it.

If Mrs. Surratt knew where these arms were concealed, she of course got that information from somebody. From whom did she get it but from her own son, a full-grown man, who had concealed them with his own hand? Herold brings them from T B; Surratt meets him there, and calls Lloyd into the parlor; Surratt points him to the secret place where they can be concealed, and his own mother goes on the day of the murder and tells him "the shooting-irons will be needed, and this field-glass will be needed; have two bottles of whisky ready; they will be called for soon;" and they were called for before twelve o'clock that night. Gentlemen, how will you dispose of this matter? What do your honest minds say to

it? It strikes me that there can be but one opinion regarding it. Every honest man, it appears to me, must entertain the same opinion as that expressed by their witness, old Mr. Watson, on the stand. There is no escaping from it. Herold, Mrs. Surratt, and the son John were all combined together in this matter, and the knowledge of one was the knowledge of all, and the knowledge came from the mother to the son. Is there any escape from it, I ask you, gentlemen? I ask you, as you will say it before God—you will say it on your oath—I ask you, as you would say it in your dying hour, what is the truth about it? As you are impressed with the oaths of these witnesses, is there any doubt about it?

I now come down to a little piece of evidence in the same connection. It is the testimony of Justice Pyles, from the same county, who likewise was about as unwilling a witness as any of them. He says John Surratt came before him to get some papers executed, he does not know exactly what they were:

"About three months, as near as I can recollect, before the assassination of Mr. Lincoln, I had left home; was working at my father's, some mile or so from there. Mr. Surratt came down there for the purpose of getting me to sign some papers as a justice of the peace, in order to make them legal. He seemed to be urgent to have me sign the papers, and having no pen, ink, or anything of the kind at the place, we proposed to go over to my brother's, about a quarter or half a mile off, and get pen and ink there. We started, and going along I asked him about his business, and so on. The draft was on hand at that time, and I asked him about it. He said either that he wanted to get some money, or fix some papers to leave for his mother, or something of that kind. He told me he wanted to go away. I asked him where, or something of that sort, for I did not want him to go away, he had been in the neighborhood so long; and he said he wanted to go away to avoid the draft."

What these papers are we do not know. This is one of those little things that fall out in the progress of a case of this kind, which show something. Those papers were for some purpose, and they were executed before a magistrate. Now what were they? This testimony was brought out early in the case; they had the fullest opportunity to explain it, if they could ex-

plain it. It means something, or they would have explained its meaning.

We now come to the testimony of another witness of theirs, Mr. David Barry. It is a matter brief, but of much import.

"I came up here with these horses the 26th of March, 1865, Sunday."

These, you will note, were the horses that Mrs. Surratt, Mrs. Slater, or Mrs. Brown, and John Surratt took from Brooke Stabler's when they went down into the country.

"When I brought the horses I took that letter to the stable. And when I had done that I went to Mrs. Surratt's house."

He says he saw Weichmann there, but did not speak in Weichmann's presence of having brought back the horses.

"I saw her in the passage the day before, which was Saturday, the 25th of March; and then saw a woman who John told me was Mrs. Brown."

How many names Mrs. Slater went by I do not know; but it seems she was then called Mrs. Brown.

"Saw her last in Port Tobacco; John Surratt was with her. He told me he was either going to put her in safe hands to be taken to Richmond, or, if necessary, he would take her to Richmond himself. He sent this message to his mother: That if he did not cross the river he would be home the next day by the stage; that if he did cross the river, he would return as soon as he could."

This is the testimony that their own witness, Mr. David Barry, gives of the conversation he had with Surratt on the day after he had taken these gray horses and had gone down there to Port Tobacco. The "woman on the brain" that he wrote about in the letter to old Brooke Stabler, was to get this woman, Mrs. Slater or Mrs. Brown, to Richmond. He sent word to his mother that if he could get across the river he would return in the next stage; if he could not, he would go to Richmond with her. That is what he was going to Richmond for, and this, you will remember, comes from their witness, and not from ours:

"The last time I saw Surratt he was in Port Tobacco, on the 26th of March. The woman he called Mrs. Brown was a rather slim, delicate

woman; think she had black eyes and dark hair; think she wore her veil down nearly all the time. I saw her at the table. She was delicate in size; should say she was under thirty. I, in company with John Surratt went from that place to Port Tobacco. There was a man in Port Tobacco who belonged to the signal corps of the Confederate army. I was anxious to see him in order to get information from two sons I had in General Lee's army. I understood from a man by the name of Howell, represented to be a blockade runner, the day before Surratt came down, that he was at Port Tobacco. I mentioned it to Surratt, and asked him if he knew whether this man was there. He replied, 'Yes.' How he got his information I forget. He then offered me a seat in his carriage, remarking at the same time that it was somewhat doubtful whether he returned himself, but said if he did not return I could drive the carriage back; that he intended to see a lady he had in charge across the Potomac river, and if necessary to Richmond. I stayed all night at Port Tobacco; Surratt wrote a letter in my presence and I brought it to this city."

And then he presents the letter to Stabler which I have read. This gentleman, who had two sons in the rebel army, comes here on the stand—brought by the other side—and tells you these facts; and he told the truth, and so will every honorable rebel when he is testifying under oath on the stand. A brave man will always tell the truth. As I said to you the other day so I say now, that I would select from the thirteen thousand rebel prisoners who passed those resolutions at Point Lookout willingly any twelve men to try this case, and I would have no doubt that they would bring in a verdict according to the evidence. All men of honor, all men who are brave, however much they may be misled, will tell the truth. It is only the coward and the bad man that tells a lie. It is the coward that is afraid to do his duty. It is the innocent that is "bold as a lion." It is the wicked that "flee when no man pursueth."

I next come to the testimony of Mr. Smoot, which will be found at page 70. Mr. Smoot was not, as you saw, a very willing witness. Whether he was a frightened witness or not I do not know, but he lives down in that county where I do not know what he may have thought about the sympathy that might surround him; nor do I know how much he might have been terrified by what Mr. Merrick said to him before he came

upon the stand. He told us under oath, on the stand, he having been called by the Government, Mr. Merrick had had him in his office. That I may make no mistake, as I do not intend to tell you any evidence except what I read, so that when this case is ended no man shall say that what I have given is the construction of counsel, but it shall be the identical words of the witness that I bring before you, I will read his words:

"Have not you been talking with Mr. Merrick on the street about this case?" "Yes, sir; he asked me some questions about it. He said he was after me with a sharp stick, or something of that kind."

Now, whether he was terrified any by Mr. Merrick's "sharp stick" or not I do not know. We found it very difficult to get him on the stand. You heard his name called more than a score of times, "Mr. Smoot," "Mr. Smoot," "Mr. Smoot," all over this court-house and all over the streets, for more than two days before we could get Mr. Smoot on the stand, so reluctant was he or so terrified by the fear of Mr. Merrick's "sharp stick." Now, let us see what he said when we did get him on:

"I recollect he (Surratt) was at my house on one occasion; know it was in cold weather—soon after I moved there. He went to my house at night, and went away the next morning; he stayed the night there, that is all; I was talking with him; do not recollect the exact conversation. We were talking about different things all the while."

That was the answer he gave to the district attorney's question. He knew what the question related to, for he had had conversations with Mr. Carrington on the subject, and yet this was his reluctant, unwilling, evasive answer:

"I saw him very often; I was joking him about his going to Richmond; he never acknowledged to me that he had been to Richmond, but laughed and said, 'If the Yankees knew what he had done, or what he was doing, they would stretch his neck.'"

What was he doing in the month of January or February, just before this murder, which led him to believe that if the Yankees knew it they would stretch his neck? Why did he think they would stretch his neck if they knew what he was

IX. AMERICAN STATE TRIALS.

doing and what he was going to do? He did not think they would stretch his neck because he was living here in Washington, faithful to the Government that protected him, and violating no law. Did he think they would stretch his neck for that, or did he think they would stretch his neck for a crime in which he knew he was engaged as a conspirator against the Government and a plotter to murder its chief? I will read a little further :

"He smiled, and raised his head up in this way (witness throwing his head back in illustration of the manner), and said, 'They would stretch this old neck of mine.'"

Won't you ask the counsel why they did not tell you the reason he thought they would stretch that old neck of his. It never occurred to one of you or one of your sons, did it, that the Government would stretch your or his neck if they knew what you or he was doing or was going to do. He knew what he had done; he knew what he was plotting to do; and he knew that if the Government were made aware of it, they ought to stretch his neck, and he said so to this friend of his in whose house he was staying all night. "Out of the abundance of the heart the mouth speaketh." It always thus speaks. A man cannot conceal the secrets of his crime. Even before the crime is committed, the crime of the plot, the crime of the purpose, will come out from "the abundance of the heart," from the man who is staying in the house. Did you ever notice this fact? If not, note it now. If a man's heart is full of anything—I do not care what it is—and that is the burden of his heart, and you stay with him over night and talk with him at the supper-table in the evening; by the fire-side, after your tea and before you go to bed; and then again the next morning when you get up and take your breakfast, if you will not say much yourself, you will find that he, unconsciously to himself, will drop out something or other which will lead you, putting it with some other thing you know or afterwards learn, to reveal the secrets of that man's heart. He cannot help it if it is a heavy burden, and out of "the abundance" of his heart it comes; it is utterly irresistible to

him, and he will reveal it, even though it relates to political affairs or some great matter of business which interests him. That is well understood and well known in diplomacy; and men practice on it for the purpose of learning the secrets of a prime minister in the Government. They dine together, walk together, talk together. They appear wholly indifferent to the conversation of the one from whom they wish to draw the knowledge. And yet a skillful diplomat can, at a few breakfasts and a few dinners, and especially if he can sleep over night in the same house, learn from the closest agent who ever lived something that is in heart, if it is abundantly there; and it will affect his action and affect his advice to his own government. It is so in smaller affairs; it is always so in great ones.

You have observed that one of these witnesses has just stated that the next time he saw Surratt at T B was on the 3d of April, and I am tracing him along to that date. I read now from Weichmann's testimony as to his being here that evening:

"Between half-past six and half-past seven he asked me to go down the street with him and take some oysters. He was dressed in gray clothes, with a shawl thrown over his shoulders. He told me that same evening that he was going to Montreal. We got the oysters near Four-and-a-half street and Pennsylvania avenue. We walked back as far as the Metropolitan Hotel, and there he bade me good night. He said he would correspond with me when he got to Montreal. I have not met him since except today.

"Booth was at the house between the 3rd and 10th of April, on one or two occasions. I remember on one of those occasions a letter was received about seven or eight o'clock. I walked into the parlor. Booth was sitting on the sofa. Mrs. Surratt was in the room, and a young lady, and Miss Anna Surratt was directly opposite Booth. I sat down at the other end of the same sofa on which Booth was sitting. After conversing for a while around the room, Booth got up and said: "Miss Ward, will you please let me see the address of that lady?"

Miss Ward has not been produced here.

"Miss Ward advanced to meet him in the center of the room, and handed him a letter. After Booth and Miss Ward had gone out, Anna Surratt got up and said, 'Mr. Weichmann, here is a letter from

brother John,' and read the letter. No lady's name was mentioned in it."

Mr. Booth was there in the room; and here was a letter from John Surratt, and Booth wanted to conceal from Weichmann, who was there, from whom the letter was, and said he wanted to see the "address of that lady," but it turned out that there was not any lady about it. I next read:

"On the evening of the 10th Mrs. Surratt asked me if I would not be kind enough to drive her into the country on the morning of the 11th of April. I consented.

"That was Tuesday. She said to me, 'Mr. Weichmann, won't you go round to the National Hotel and tell Mr. Booth that I sent you for his horse and buggy, and desire to know whether I can have it.' I did go to the National Hotel, and found Booth in his room. I communicated my message just as Mrs. Surratt had told me. He said 'I have sold the horse and buggy, but here is ten dollars; go you and hire one.'"

Booth furnishes the money for Mrs. Surratt to go into the country on this fatal errand to aid in this fatal expedition.

"In speaking about the horses I said to him, 'I thought they were John Surratt's horses.' 'No,' says he, 'they are my horses.' I left the hotel, and went to Howard's stable and hired a horse and buggy. I then went to Mrs. Surratt's house. We left the house about half-past nine o'clock. As we were on our way down to Surrattsville we met Mr. John M. Lloyd."

The witness continues:

"I drove to the tavern. She wanted to meet a Mr. Nothey there, but when we arrived at Surrattsville, at half-past twelve p. m., Nothey was not there, and she had a messenger despatched for him, with word that he should meet her there at two o'clock. We then drove further on to Mr. Bennett Gwynn's, where we took dinner. After dinner Mr. Gwynn, Mrs. Surratt and myself returned back to Surrattsville."

I now bring your attention back to the 3d of April. On the morning of the 3d of April we found Surratt at T B. In the afternoon of that day he came to Washington, reaching here about half-past six o'clock. At seven o'clock he went out with Weichmann to an oyster-saloon and took some oysters,

and said that he was going to Montreal. Weichmann and he parted then, and Surratt did not return to the house again that night, nor sleep there that night, nor is there any pretence that he did, nor one particle of proof that he did. He shook hands with Weichmann as at parting and promised to write to him from Montreal. This was about seven o'clock, and he did not return to that house. I call your attention to this for the purpose of showing you that the attempt which has been made here to show that it was on that night that Susan Ann Jackson saw him there is entirely an impossibility, entirely a mistake. She neither saw him there at that time nor was that the time when the clothes were left there to be washed, but I will show you presently when they were left there to be washed, and whose clothes were left there for that purpose. It came out from their own witnesses, little thinking what a terrible fact they were thus relating, when they told you about Holahan going there the next week after this murder and finding Surratt's handkerchief lying on the bed, clean, not having been put away, but just brought from the wash, with Surratt's name upon it. I have no doubt that is true; I have not any doubt that Holahan found the handkerchief there at the time he swears he did; but they had little idea of what a terrible truth they were telling when they brought out that fact. Susan Ann Jackson told you that on that Friday night some clothes were left out there, and that Mrs. Surratt told her they were her son's, and that that was her son John. This she said was somewhere about nine o'clock in the evening. After they had all had supper, she brought in an extra pot of tea, having cleaned up the table, for her son John. And on that Friday night she took out those clothes, and they were John's clothes; and the next week Holahan goes there and finds them clean, lying on his own bed, in his own room, with John Surratt's name upon them. It is the way that God Almighty in His inscrutable designs brings out the truth even from those who are trying to conceal it. I am still reading from Weichmann's testimony; and this is about the night of the murder, the return from Sur-

rattsville, where she had left the field-glass with Lloyd and told him to have "those things ready:"

"We left Surrattsville on our return home about half-past six in the evening. On our way home she said she was very anxious to be home at nine o'clock; that she was to meet some gentleman there."

And we shall presently see that she did get home about nine o'clock. There is no dispute about the time she left Surrattsville, and she could not have got home before nine o'clock, and she did not. You will remember that on the 3d of April, when her son was there, he had left the house at seven o'clock, and did not return to it. This was the 14th.

"I asked her who it was—if it was Booth? She made no reply. I further stated something about Booth's being in the city here and not acting; I asked her why he was not acting. Her reply was, 'Booth is done acting, and is going to New York soon, never to return.' She turned round to me and asked if I did not know that, or if I did not know that Booth was crazy on one subject. I told her I did not. What that one subject was she never stated to me. On our return we met the pickets I had seen stationed on the left side of the road as we went down. The soldiers at this time were on their horses, returning to the city. Our buggy passed right between them. I should suppose there were four or six soldiers on horseback, and I remember distinctly that the buggy passed right between them. Just about two miles from Washington there is a very high hill, which commands a fine view of the city. That evening of the 14th there was a brilliant illumination in Washington, on account of the restoration of the flag over Fort Sumter. I made some remarks to Mrs. Surratt, saying that it was better for the country that peace should return. She said, 'I am afraid that all this rejoicing will be turned into mourning, and all this gladness into sorrow.'"

No doubt she thought so. She had just left Lloyd's, where she had told him to have those shooting-irons and two bottles of whisky ready, that they would be wanted soon, and she could not help saying, as she came in that night and saw the rejoicing and the city illuminated, "All this rejoicing will be turned into mourning, and all this gladness into sorrow." Why did she say that? Why did she feel that? Because she knew the arms had been concealed at Lloyd's house by Herold and her son; she knew what orders

she had given about them, and she knew what plot was on that very night to be carried into execution, and she could not help bursting out on that night when she returned, "All this rejoicing will be turned into mourning, and all this gladness into sorrow." There was nothing very unnatural in this, with the heart so full and the bosom oppressed with such "perilous stuff" as it then contained.

I want you to note the time of day, for it has a bearing upon the question as to the time when Susan Ann Jackson saw this young man at the house and took the clothes to wash:

"Just as we came into Pennsylvania avenue, near the Capitol, we saw a torchlight procession coming either up or going down the avenue. The horse shied at the brilliant lights, and we were compelled to turn up Second street."

This was not in the day-time, but just about nine o'clock at night, and you know she wanted to get home at nine o'clock.

"We arrived at home at nine o'clock, or a few minutes before nine. I helped Mrs. Surratt to get out, and then returned the buggy. We left Surrattsville at half-past six, and it takes two hours or two hours and a half to come to Washington."

Nobody has disputed this; all agree upon the time they left and all agree upon the time they arrived here; nine o'clock in the evening on which Susan Jackson saw that son when he left his clothes to be washed, which Holahan the next week took and put in his pocket.

"I returned the buggy to Howard's stable, which was right back of Mrs. Surratt's house on G street; I then immediately returned home; I then went down and partook of some supper; Mrs. Surratt the same evening showed me a letter which she had received from her son. While I was sitting there eating supper with Miss Fitzpatrick, Miss Jenkins, Miss Surratt and Mrs. Surratt in the room, I heard some one very rapidly ascending the stairs.

"She remained in the parlor. After supper I went into the parlor, and the young ladies who had been at supper with me also came into the parlor. We sat and talked there. Mrs. Surratt once asked me where the torchlight procession was going that we had seen on the avenue. I told her that I thought it was a procession of arsenal employees going to serenade the President. She replied that she would like to know very much, as she was interested in it. As I recollect now, her manner appeared to me to be very nervous and

very restless. I once asked her what was the matter. She said she did not feel well. She had a pair of beads in her hands.

"She was walking up and down the room. She once asked me to pray for her intentions. I asked her what her intentions were. I said I never prayed for anyone's intentions unless I knew what they were."

You remember Miss Honora Fitzpatrick told you the same thing, that Mrs. Surratt was walking up and down the room, but she said that she did not hear Mrs. Surratt say what Weichmann stated, but she said Mrs. Surratt was walking up and down the room. I do not understand the full meaning of this praying for intentions; perhaps some of you do. I believe it has a meaning in the Catholic Church, which is a potent meaning; but not being familiar with it, I am not going to undertake to explain it. If any one of you is familiar with it, he knows what it means much better than I do, and I will leave it to you.

"Booth was at Mrs. Surratt's house two or three months prior to the murder very frequently. It was a very common thing for me to see him in the parlor with Surratt, when Booth was in town, after four o'clock. They appeared like brothers. Mrs. Surratt appeared to like him very much. I heard her once when Booth had stayed two or three hours in the parlor call him 'Pet,' saying, 'Pet stayed two or three hours in the parlor last evening.' I am positive she used the word 'Pet.' She named the hours from ten at night until one in the morning."

Here are these remarkable telegrams that Booth sent; they are here, all original, in his own handwriting. It seems that those that he had and expected to have in his employ received their communications and their orders from him from time to time. You will recollect that I showed you the other day this card, (exhibiting the card,) on which "J. Harrison Surratt" writes: "I tried to get leave, but could not succeed." As you recollect, we proved that he tried to get leave from Adams Express Company, but failed to do so. Booth did not like to have any of the men engaged in this conspiracy let their business affect them, and he therefore telegraphed in these words:

"New York, March 13, 1865.

"To M. O'Laughlin, Esq., No. 57 North Exeter street, Baltimore, Md.:

"Don't you fear to neglect your business. You had better come at once. J. Booth."

And

"New York, March 27, 1865.

"To M. O'Laughlin, North Exeter street, Baltimore, Md.:

"Get word to Sam to come on. With or without him, Wednesday morning we sell—that day, sure: Don't fail.

"J. Wilkes Booth."

We suppose the "Sam." mentioned to be Sam. Arnold, who was one of the conspirators, but that we do not know. I do not undertake to tell you that I know things which the evidence does not prove. I have a right to infer, however, when Sam. Arnold is proved to be one of the conspirators and has taken his fate for it that he is the one alluded to.

"With or without him, Wednesday morning we sell—that day, sure. Don't fail."

You will remember that the thing they were selling "ile," as they called it. They were deep in oil stocks; they were going "to strike ile," as they called it; and when the thing was to be done, then they were to sell the "ile" stock and make a great deal of money out of the oil.

I now show you the letter which, on the 12th of November, 1864, Surratt wrote to Weichmann. Here is the letter, and here is the card, and here is the letter he wrote to Atzerodt. (Exhibiting them to the jury.) You see whether it required any expert to find out that these were written by the same hand. Here is a card which nobody disputes, and here is the letter to Atzerodt, which nobody will dispute who reads the card and the letter to Weichmann. It does not require any decipherer to find that out. They are exactly the same turn, the same slant, the same bearing. There is a curious fact connected with one of these letters. This letter to Weichmann, Surratt commenced to write in the same hand in which he wrote the card and the letter to Atzerodt, but before he gets to the bottom he completely changes it. You can hardly

find two handwritings more unlike than that at the commencement of this letter and that at the close; and yet we know that it was all written by him. He seems to have a good deal of skill in that kind of thing—in making these changes. Some men, I know, have that faculty; I have not. I could not write two hands like these; some of you perhaps could and some could not. I know plenty of men who could. Now, let us see what this letter is:

“Surrattsville, November 12, 1864.

“Dear Al.: Sorry I could not get up. Will be up on Sunday. Hope you are getting along well. How are times—all the pretty girls? My most pious regards to the latter; as for the former, I care not a continental d—n. Have you been to the fair? If so, what have we now? I’m interested in the bedstead.”

Who do you suppose “the bedstead” means? I do not know. It did not mean a bedstead, I guess.

“How’s Kennedy? Tight, as usual, I suppose. Opened his office, I hear. Fifty to one ’tis a failure. Am happy I do not belong to the ‘firm.’ Been busy all the week taking care of and securing the crops. Next Tuesday, and the jig’s up. Goodbye, Surrattsville. Goodbye, God-forsaken country. Old Abe, the good old soul, may the devil take pity on him. John H. Surratt.

“To Louis J. Weichmann, Esq., Washington city, D. C.”

I turn now where we learn a little more about the oil business:

“Shortly after Surratt’s introduction to Booth, Surratt told me that he was going to Europe; that he was engaged in cotton speculations. He stated this in the presence of his sister.”

No sister has been brought to deny this. No inmate of the house has been brought to deny this statement, or any part of it.

“He said that \$3,000 had been advanced to him by some elderly gentleman residing in the neighborhood.”

That was rather odd, that this elderly gentleman should be advancing to him \$3,000 for him to engage in cotton speculations and go to Europe with. They did not tell us

who he was, and we have not seen him. The statement goes on:

"And that he was going to Liverpool, from Liverpool to Nassau, and thence to Matamoras, in Mexico, to find his brother Isaac. He was in the habit of stating that very frequently."

Why do you suppose he stated it so very frequently? It was because there was not a word of truth in it, and no intention of that kind, and no such purpose. It was said simply to divert the mind from the real purpose, which was this conspiracy.

"At another time he said he was engaged in the oil business; he had six shares of oil stock. Once he even approached me and asked me if I would not write an article for the newspaper, to the effect that John Wilkes Booth, the accomplished actor, in consequence of having erysipelas in his leg, had retired from the stage and was engaged in the oil business. He stated that Booth had made quite a fortune, and had presented his sister with the money he had made out of the oil."

We have not had any evidence about the oil speculations that Booth was said to have gone into. We had this testimony early in the case. We do not find that Booth ever entered into any oil speculation in reality, but you will find, when you read his letter, where he said "strike, and strike deep," that the oil he wanted was the blood of the murdered Lincoln, and the oil he attempted to get was from the heart of that great, good man.

Now, gentlemen, we pass to another subject, and one you will all remember. It is general, and yet it is particular. It relates to this subject very directly, although at first view it would seem to be indirect. Let me take you back to the time of the Charleston convention, in the month of May, 1860. The great Democratic party of this country there met for the purpose of nominating a candidate for the Presidency of the United States. They had the power absolutely in their hands. Mr. Lincoln had already been nominated by our adversaries. All of us knew that if we made a wise nomination we could elect the man we nominated,

100

if we went into it heart and soul, and shoulder to shoulder, as we had done in former years. What happened? When the convention met, and those who loved their country and loved its Government were willing to make every sacrifice for harmony, those who were determined to put an end to their Government succeeded in breaking up that convention, and putting an end to a cordial and harmonious nomination of some member of the Democratic party who could have been elected and saved the country from this bloody war. What followed? That followed which they intended should follow. The leading men in the conspiracy against the Government intended that Abraham Lincoln should be elected. That is what they wanted. They wanted an excuse to turn traitor to this Government; to break it up and establish a new one, in order that, as one of them told me with his own lips, they might have a Government of gentlemen, in which gentlemen should rule, and in which the negro and the low white should take no part, except as the laborers for those who governed. That was their purpose. They succeeded to a certain extent. Mr. Lincoln was elected. Then came various plots and plans against this Government. One was to force Buchanan to resign, in order that Breckenridge, the Vice President, might take possession of the Government and by force prevent the inauguration of Lincoln, on the ground that he was not constitutionally elected. That failed, and then a plot was entered into for the purpose of preventing his inauguration by force in another way. Mr. Lincoln was, however, finally inaugurated, and then, when the Confederacy found that there was going to be earnest war, and that this Government was not to be put down, that freedom was raising her voice, and that our freedom-loving people, who loved this Government, would peril their lives, their fortunes, and their honor to support it; that they would do it in the South; that they would do it in Virginia, as my noble friend the district attorney did most gloriously, and that from North to South the feeling in favor of the old flag was such that they would

have a bloody business before they could destroy this blessed Government, then what did they attempt to do? Various plots were formed for the purpose of seeing how they could overturn this Government and throw us into confusion. At first the thought was to kidnap the President and take him off. That they soon discovered, however, required a machinery too complicated, too great, too difficult; in short, it was impossible. It was a great deal easier to have him shot dead, or stabbed, or poisoned, and the parties flee, than it was to undertake to carry him off. They found very soon that that was impossible. This whole subject has been investigated. It was stated here that this conspiracy commenced in 1863. It did commence at that time. We did at one time think of going into its early inception; but we found that that was not necessary, and would only lumber and complicate this case. That scheme of abduction was early abandoned. They found that it was impossible to carry it out, and then they attempted to lay the plan for the murder of the President, the Secretary of State, and the Vice President, and thus throw the Government into confusion, when, in view of the hostility which existed between different parties at the North, they hoped the Government would be overthrown, and they could march into the city of Washington, and the great slaveholders who had ruled this country could continue to rule it with a rod of iron, and that the poor white and the humbler citizen even who was not poor, should bow in subjection to their love of power and be ruled by an oligarchy instead of by the free ballots of you all. You would not have it so. The loyal people of Virginia would not have it so, nor of Maryland, nor of this District, nor of the Northern States; and they rose in their might and forbade it.

Now, what occurred? Mr. Lincoln had gone on in power, and the Government was succeeding, with difficulty, to be sure, for there were great dissensions among us, as there always are in a great commotion, as there always are in a great revolution like this. Brother was arrayed against

brother, and father against son. Even here, even in my own city, hostile were we to the exercise of arbitrary power through the military; hostile were we to many acts of this Government, and many of us felt that it was not carried on in the manner in which we desired to have it carried on. It was believed that when these passions were thus aroused, and these parties thus arrayed, the one against the other, if Mr. Lincoln could be got out of the way, such confusion might be created in the North that the South might carry out their plan of their separate and independent Government, which would have resulted in an absolute loss of liberty to every one of you. You cannot have two great powers situated side by side, of a common origin, of a common language, and a common religion, where there is no natural boundary, and where only an imaginary line cuts off the great rivers which empty into the sea, without having eternal war; and from eternal war liberty always shrinks away, and the military commander becomes supreme and absolute. Liberty always perishes under such circumstances.

In 1864, as early as the month of April, by one of those providential occurrences which often happen in this world, Mrs. McClermont, standing down on the avenue, waiting for a car to pass, saw three men talking together, and heard them talk about the Soldiers' Home, where Mr. Lincoln was then staying, and to which place, in the afternoon, he used to ride out with his wife and little boy; heard them speak about a telescopic rifle, and heard one of them remark that his wife and little boy were generally along; heard another one say "we must put them out of the way, if necessary." Mrs. McClermont, one of your own citizens, born here, and who has lived here all her life, comes and tells you this. She tells you who the men were. She knew them. She knew Booth, she knew Herold. She knew Atzerodt; and those were the men. So early as that she overheard this conversation. You do not suppose she was lying about it. She had no motive to lie. You must believe her, and I am sure you do believe her.

Now let us see who this Herold was that she met there at this time. You have heard some account given of him when he was arrested at the time Booth was killed. Booth called him a boy—an innocent boy—and said that he wanted to surrender. You will notice that Booth had a kind of romantic gallantry about him, which led him to always take the blame upon himself. Booth wanted to come out, and urged Colonel Conger to let him come and fight his whole command. He told him he was a brave man, and asked the privilege of coming out with his carbine, which he had in his hand, and he lame, and fighting them all. He meant to sell his life at the costliest price he could. He meant to lay at his feet some one or two or three or more before he surrendered. He wished to shield Herold, who was with him, and who he said was an innocent boy; for he prayed, and how could he pray if he was guilty. He wished to shield all. He wished to take all the responsibility upon himself. He imagined himself a greater than Brutus; and yet, strange to say, he thought all were against him, and even doubted whether God could forgive him. Indeed, I think he says he knew He could not. A strange, wild notion he had after the strange drama in which he had been such a bloody actor. It is not strange that his mind had become unhinged; not strange that he had run to these wild extremes in his thoughts about dying for his country, as he called it. But who was this Herold? He was a little clerk, humble and poor; he was employed in the drug-store of Mr. Thompson. He went there in March, 1863, and stayed there until he was discharged, as Mr. Thompson tells you, the following fourth of July. How happened this weak young man, with neither pluck, nor courage, nor physical strength, nor genius, nor power, to have been brought into this great conspiracy? You can see why Payne was, why Atzerodt was, why Surratt was; but why this weak Herold was brought into it it is not so easy at first sight to discover; but when a certain fact is mentioned it can very easily be accounted for. Mr. Lincoln got his medicines at the drug-

store of Mr. Thompson, where Herold was, and if Herold could be made a party to the plot, there might be a chance to poison Lincoln, and thus the thing be done without the great violence and risk which would attend the shooting of him. We shall show you more more of this in the evidence as we proceed, and from Booth's own hand; it is very remarkable, too. That is why Herold was brought into this conspiracy; and, being in it, he had to be kept in it. After he was discharged from this store on the fourth of July, 1863, he never went into any other employment, but kept with Booth until the day that Booth was shot, after the murder. There is no evidence to show that he was in any other employment from the hour he was discharged from this drug-store, where Mr. Lincoln got his medicines, until he was taken and put in irons and finally disposed of by the military tribunal.

Gentlemen, I now come to an act in this dark drama, which, though strange, is not new. So wonderful is it, that it seems to us to come from beyond the veil which separates us from death. As I have already said, "all government is of God." The powers that be are ordained of God, and for some wise purpose which we do not understand the great Ruler of all, by presentiments, by portents, by bodings, and by dreams, sends some shadowy warning of the coming doom when some great disaster is to befall a nation. So was it in the days of Saul; so was it when the great Julius Cæsar fell; so was it when Brutus died at Philippi; so was it when Christ was crucified, and the wife of Pontius Pilate said to her husband, "Have thou nothing to do with this man, for I have suffered many things this day in a dream because of him;" so was it when the great Henry IV of France was assassinated; so was it when Harold fell at the battle of Hastings; so was it on the bloody day of Bosworth field; so was it when the Russian Czar was assassinated; so was it and so has it ever been when men in high governmental places have been stricken down by the assassin's hand; so was it before the death of Abraham Lin-

coln, the President of the United States. In the books which I hold in my hand—in this *Life of Cæsar*, by De Quincy; in this *life of Pompey*, by Plutarch; and in this presentation which is given in *Julius Cæsar* by the great dramatist, Shakespeare, are related the portents which came to warn Pompey of his doom when he left his ship and landed on the coast of Egypt; and the warning given to Julius Cæsar, not only in the dream of Calphurnia, his wife, but in his own dream on that bloody day when he was assassinated in the Senate. The same was true, as I have told you, when the Prince of Orange was assassinated; the same was true when Henry IV of France was assassinated; and this other strange historic fact is equally true, that never in the whole history with which we have been familiar has there been a single instance of the assassination of the head of a government in which the assassins have not all been brought to justice. It is a terrible thing to fight against God. Government being of God, any attempt to throw a people into confusion and anarchy is fighting against God, and in no instance has he ever suffered a man guilty of such a crime to go unpunished. Though he may have taken unto himself the wings of the morning, and fled to the uttermost parts of the earth, yet the eye of God has watched him and the hand of justice has brought him back to give a rendition of his bloody account.

On the 14th of April, 1865, Abraham Lincoln called together his Cabinet. He was in good spirits, for, as you well remember, we had at that time been receiving the most gratifying and cheering news; but still upon his soul there lay a heavy gloom, and he remarked, "I am very anxious to hear from Sherman." The reply was, "You will hear good news from Sherman. There cannot be any doubt about that." General Grant was there, and he knew Sherman. He took occasion to assure the President that the news from Sherman would be all right. "I do not know," replied Mr. Lincoln, "I am very anxious to hear from Sherman. I feel that some great disaster is coming upon us. Last night I was visited by

a strange dream, the same strange dream that in the darkness of the night, when deep sleep falleth upon men, hath three times before visited me. Before the battle of Bull Run, before the battle of Stone River, before the battle of Chancellorsville, it came to me in the same identical distinct form; and the following day came the news of the disaster. And now, last night, this same dream came to me in my sleep, and I feel that some great calamity is to befall this nation, of which I am a part." The members of the Cabinet who heard that will never forget it. In a few hours afterwards he did not hear from Sherman, but there came a realization of the dream, and his spirit was led up to the eternal Godhead.

In this connection a thing appears in no respect less strange. I hold in my hand two letters—those found by Mrs. Hudspeth in the railroad car. One is written in a delicate female hand. You have seen them before, but I want you to see them again. You will not easily forget them; and after you have heard all the history there is connected with them you will tell it to your children. You have not any doubt that that was written by a woman, have you? (Exhibiting to the jury the letter signed Leenea.)^a When you heard it read, you had not any doubt that it was composed by a woman. It has all of a woman in it—a woman with a love for her husband and a devotion to her only child. It came with this letter. (Exhibiting the letter signed Charles Selby.)^b I want you to notice the endorsement on the envelope; it will become historic. These papers will never pass out of the possession of this Government, except by theft. The endorsement is "Assassination—General Dix," written in the hand of President Lincoln. There is a remarkable history connected with this letter. Let us trace it. Mrs. Hudspeth, it seems, was in the city of New York, riding in a railroad car with her little girl, in 1864—just after the re-election of Mr. Lincoln, as you will remember, and this wonderful thing occurred. There is a further history

^a See 8 Am. St. Tr. 59.

^b See 8 Am. St. Tr. 58.

about this more startling than what I have given. Let us see what this woman says. She is brought here from Canada, put upon that stand, and tells you her simple tale. Let me read it to you:

"What time in November was it—the first or last part?" "It was about the 14th, I think."

And when we turn to the record of the National Hotel we find Booth was in New York on that day, and did not return here until the 15th. As I have said to you, gentlemen, every truth in the universe is in perfect harmony with every other truth. I pledge you my word, my honor and my eternal hope of salvation that there is not a word of this evidence upon which the Government have relied that is not in perfect harmony with every other word, as you will see as we proceed; for I repeat, every truth is in perfect harmony with every other truth. So God has ordered it. If falsehood is brought in, it dislocates it. What does Mrs. Hudspeth say in her testimony? I will continue the reading:

"What enables me to recollect the month is the circumstance of picking up letters in regard to the assassination. General Butler had been in the city, but he had left on the morning of the day I found the letters; General Scott was at the Hoffman House; he resided there. During that visit in November, I was riding on the Third avenue cars; a daughter of mine was with me. There were two gentlemen in the car, sitting next to me. One of these was an educated man, and the other was not. I overheard their conversation at different times when the car would stop. One of them was a very fine, gentlemanly-looking man; he had the hand of a man who was never obliged to do any work; had a smooth, white hand. It was quite a small hand. My seeing that he was disguised was what first attracted by attention. In the jarring of the car his head was struck, which had the effect to push forward his hat. He seemed to have a wig and false whiskers on, and these were pushed forward at the same time, showing the skin underneath the whiskers to be fairer than the front part of his face, which seemed to be stained with something. The front part of his face was darker than that under the whiskers.

"There was a scar on the right cheek of the gentlemanly-looking man, just underenath where the whiskers were. When the whiskers were pushed forward I could see the scar; that was on the side next to me. The other person was a large man, a common looking man.

AMERICAN STATE TRIALS.

He was a shorter and a stouter man than this one. The one who had the scar on the face called him by the name of Johnson."

I trust you will remember that.

"The well-dressed gentleman, the one who sat next to me, put his hand back to get letters out of his pocket, and I saw that he had a pistol in his belt. I heard the gentleman with the scar say he would leave for Washington day after tomorrow."

And he did.

"The other one said he was going to Newburg, or Newbern, that night. The man named Johnson was very angry because it had not fallen upon him to do something that he had been sent as a messenger to direct this other man to do. He said he wished it had fallen upon him, instead of on this other man to whom he had brought the message to go to Washington. They both left before I did.

"I saw them exchanging letters in the cars. I had letters of my own to post, and was then on my way to the postoffice. As I was leaving the car my little girl picked up a letter at the edge of my dress and gave it to me, with the remark that I had lost one of my letters. I took it without noticing that it was not one of my own, and put it in the pocket of my coat with my other letters, and kept it there until I got to the broker's, where I was going with some gold, near Nassau street. In putting my hand into my pocket to get some money, I took out the letters that I had in there. I instantly saw these letters in a blank envelope, and knew they were not mine. Being in an unsealed envelope, I opened them to see what they were, and found that they related to this plot. I saw General Butler's name was mentioned in the letter, and knowing very few persons in New York, having been there but a short time, the first thought that I had was to give them to him. As his name was mentioned in the letter, I thought that he would pay more attention to them than any one else. I had seen by the newspapers that he was in the city at the time. I went up to the Hoffman House, where he had been stopping, and inquired for him.

"He had left that morning. I then asked for General Scott. He was not well, but said he would see me. I said I wanted to see him with regard to something of importance. When I entered the room I told him of what I had found, and the circumstances connected with the finding. He asked me to read the letters to him. I did so, and he thought they were of great importance. It was nearly dark at the time."

Now let us see what these letters are. I have shown you this little letter, written in some little woman's hand, to Lewis, her husband. When General Scott and General Dix

saw this letter from this loving woman they knew there was no sham about it. None of you can read that letter without having your heart touched, although it was written by the young wife to Payne, the assassin; no man can who has a heart. I am going to read these letters. As you will remember, gentlemen of the jury, we proved this Selby letter, by the expert whom you saw before you, to be the handwriting of Booth, and when compared with his other writing, they do not differ near so much as the writing in Surratt's own two notes differ. Then Mrs. Hudspeth identified Booth as recognizing his features by the photograph, and he was in New York at the time, as the hotel register shows. Every circumstance goes to prove that this letter (the Leenes letter) was sent on to Booth, that it might get to Lewis Payne from his poor wife, and the other was sent to Payne, who was then to perform the deed and kill Mr. Lincoln. And now you will begin to see what is meant by "change of plan." They changed their plan several times. At one time the plan was for Lewis Payne to kill Lincoln; at another time it was that Lincoln should be poisoned by Herold; at another time it was an Englishman that was to do the deed, as you will see when I come to read; at another time it was that Booth was to perform the deed. I will now read Booth's letter in a disguised hand, and his name disguised as Charles Selby:

"Dear Louis: The time has at last come that we have all wished for, and upon you everything depends. As it was decided before you left, we were to cast lots."

As was done by the Jews when they murdered Christ.

"Accordingly we did so, and you are to be the Charlotte Corday of the nineteenth century. When you remember the fearful, solemn vow that was taken by us, you will feel there is no drawback. Abe must die, and now."

He had just been re-elected, you remember, a few days before. Their hope had been that Lincoln would be defeated, and that, in the confusion and difficulty thereby occurring, the South might gain a recognition of their independence, and

then they would gain what they aimed at when they attempted to dissolve the Union—a separate government, made up of an oligarchy of rich men, where the poor should be the servants of the rich.

“You can choose your weapons—the cup, the knife, the bullet. The cup failed us once, and might again.”

They changed their plan.

“Johnson”——

You will remember that Mrs. Hudspeth heard him speaking with Johnson——

“Johnson, who will give you this, has been like an enraged demon since the meeting, because it has not fallen upon him to rid the world of the monster. He says the blood of his gray-haired father and his noble brother call upon him for revenge, and revenge he will have; if he cannot wreak it upon the fountain head, he will upon some of the blood-thirsty generals. Butler would suit him. As our plans were all concocted and well arranged, we separated; and as I am writing—on my way to Detroit—I will only say that all rests upon you. You know where to find your friends. Your disguises are so perfect and complete that, without one knew your face, no police telegraphic dispatch would catch you. The English gentleman Harcourt must not act hastily. Remember, he has ten days.”

Who is “the English gentleman Harcourt?” A character in a play, and it is given here.

“Strike for your home; strike for your country; bide your time, but strike sure. Get introduced, congratulate him, listen to his stories; not many more will the brute tell to earthly friends.”

Then again they changed their plan. The plan was that he should get introduced, listen to Mr. Lincoln’s stories, which he was fond of telling, as you know, and, when listening to his stories, to “strike sure.” They changed their plan then, as they did a dozen times before the deed was done.

“Do anything but fail, and meet us at the appointed place within the fortnight. Enclose this note, together with one of poor Leenea.”

And there is the note of poor Leenea; (exhibiting the other letter;) we will read it presently.

"I will give the reason for this when we meet. Return by Johnson. I wish I could go to you, but duty calls me to the West. You will probably hear from me in Washington. Sanders is doing us no good in Canada."

You remember the drunken Sanders was not supposed to be doing much benefit to the rebel cause in Canada, and Booth was right when he said so.

"Believe me, your brother in love,
"Charles Selby."

Now, let us read the letter of "poor Leenea," and see whether you think it is a forgery—it does not look like one on the face of it—or a genuine letter:

St. Louis, October 21, 1864.

"Dearest Husband: Why do you not come home? You left me for ten days only, and you now have been from home more than two weeks. In that long time only sent me one short note—a few cold words, and a check for money, which I did not require."

How like a woman, that!

"What has come over you?"

The poor woman did not know that he was in a plot to commit murder.

"Have you forgotten your wife and child? Baby calls for papa till my heart aches. We are so lonely without you."

Do you think a woman wrote that—a real woman?

"I have written to you again and again, and, as a last resource, yesterday wrote to Charlie, begging him to see you and tell you to come home. I am so ill—not able to leave my room; if I was, I would go to you wherever you were, if in this world."

I think a woman wrote that.

"Mamma says I must not write any more, as I am too weak. Louis, darling, do not stay away any longer from your heart-broken wife.
"Leenea."

There is truth there, gentlemen, and when this letter came first to General Scott, and then to General Dix, they saw it was true, and I have here somewhere among my papers the letter of General Dix sending on these letters to the Govern-

ment. They were sent to President Lincoln, and there is a history about them which will never perish. I have shown you his indorsement on the back. Mr. Lincoln had received a great many threatening letters, as most of the officers of the Government had. He paid no heed to them; he did not preserve any of them, considering them of no importance, but as mere threats. When this letter came, he went over to the office of the Secretary of War, went into a private room, and——

Mr. Bradley: I do not know whether we have a right to interrupt you; but I beg you to confine yourself to the evidence as far as possible.

Mr. Pierrepont. After the door had been locked this letter was shown to the Secretary of War, and it made a deep and lasting impression upon that officer. It was taken back by Mr. Lincoln. After the President had been shot, and while the Secretary, to whom this had been communicated, stood by his dying bed, the remembrance of this letter flashed across his mind, and it immediately occurred to him that perhaps it had some connection with the murder. He went forthwith to the Presidential Mansion to see if he could get the letter. He found it in a private drawer of Mr. Lincoln, in this envelope, and with this indorsement in his own handwriting: "Assassination."

Mr. Bradley. That is the very thing to which I objected, that you should give the impressions of the Secretary of War, or any body else.

Mr. Merrick. There is no proof about that at all.

Mr. Pierrepont. I admit the impressions are not proof. I am not giving them as proof. I am only giving them as a part of the history of this strange transaction, and a history that should not be allowed to perish. It is a history that belongs to the country; belongs to you, and belongs to that strange letter and that indorsement by this murdered man. It is a part of the wonderful history of this wonderful transaction which ought not to perish.

I have told you, gentlemen, Booth's whereabouts at the time, and I turn you now, to prove it, to the record. That which I claim is evidence, and has been testified to you, I read to you. My own inferences from the evidence I do not claim to read. I read from the testimony of Mr. Bunker:

"November 9, 1864, J. Wilkes Booth arrived at the National Hotel, and occupied room 20. He left by the early train on the morning of November 11; know that fact by a book we kept at the hotel, called the departure book. He returned again November 15, and left on the 16th."

He was then in New York, at the very time these letters were found by Mrs. Hudspeth, which dropped from his pocket. The disguises which he had put upon his head and face for the purpose of preventing his ever being known were the very things which attracted her attention, and the very means by which he was identified; and it is nothing uncommon. When men undertake to conceal themselves for purposes of crime, the very arts they use are the means by which they are detected.

Now you see, gentlemen, what is meant by a change of plan. In the spring of 1864 the plan was to murder Mr. Lincoln. They had various plans to accomplish it. They thought to do it, as he went to the Soldiers' Home, by a telescopic rifle, and they did not intend to let his wife and child stand in their way. They then thought to do it by having Payne call upon Mr. Lincoln, get into conversation with him, listen to his stories, seem to be interested in them, and then to strike the knife home deep into his heart. They at another time thought to poison him, and for that purpose tried the cup; but it seemed that that failed them once, and, as Booth said, might fail them again. They finally concluded they would try to kill him in the theatre, instead of on his way to the Soldiers' Home, and Booth was to do that; Payne was to kill Secretary Seward at his house. That plan they carried out.

But, gentlemen, notwithstanding this change of plan, never was there for more than a year any other purpose than to murder. The other plan required too much machinery, too

many men, and subjected them to too much danger. They determined that they would kill him, and the changes in the plan were simply as to the mode of killing, and the men who should strike the fatal blow.

I turn now to the testimony of Charles Dawson, at page 218. There was found, after the death of Booth, in the hotel where he boarded, this letter, addressed to him. Here it is: "J. W. B., National Hotel, Washington, D. C." Let us see whether this letter throws any light on this terrible tragedy. You will notice it is dated April 6—the murder was committed April 14:

"South Branch Bridge, April 6, 1865.

"Friend Wilkes: I received yours of March 12, and reply as soon as practicable. I saw French and Brady and others about the oil speculation."

Here comes in the oil speculation again, just before the murder.

"The subscription to the stock amounts to eight thousand dollars, and I add one thousand myself, which is about all I can stand; now, when you sink your well go deep enough; don't fail; everything depends upon you and your helpers."

Who were Booth's helpers in sinking his well? We have one of those helpers on trial here:

"If you can't get through on your trip, after you strike ile, strike through Thornton Gap and across by Capon, Romney's, and down the branch and I can keep you safe from all hardships for a year."

Did he want to run after he had struck oil? I should suppose he would want to keep still and gather the oil, put it into casks, and use it. But no, he was to run the moment he struck oil; he was to flee.

"I am clear of all surveillance now that infernal Purdy is beat."

How was he "beat?" He tells us:

"I hired that girl to charge him with an outrage, and reported him to old Kelly, which sent him in the shade."

That is the way he was beat. A woman was hired, to perjure her soul and swear he had committed an outrage upon

her to put the man out of the way; a fit action for the helper in this treason and murder.

"But he suspects too damn much now; had he better be silenced for good?"

Into what a scene of assassins are we brought! And yet your sympathies are tried to be aroused, and you are asked, have we not had blood enough, and shall not this great and generous Government of thirty millions of people let a man go who has been engaged in this fearful crime?

"I send this up by Tom, and if he don't get drunk you will get it the ninth. At all events, it can't be understood if lost."

I think we are understanding something about it, gentlemen. This wretch did not suppose this vile letter of murder would be understood if lost; but is there a man here that does not understand it? Is there a doubt about what this letter says and what it means?

"I can't half write; have been drunk for two days. Don't write so much highfalutin next time."

Well, Booth writes in a tragic strain, as you have seen. He said, "You can choose your weapons—the cup, the knife, the bullet. We tried the cup, and it failed. Now, strike deep; strike for your country; remember that brother's oath, and strike home." That this fellow calls "highfalutin." It is rather so, but there is nothing of that kind in what he says.

"No more; only Jake will be at Green's with the funds. Burn this. Truly, yours, Lon.

"Sue Guthrie sends much love."

"Jake will be at Green's with the funds." Well, "Jake" was up in Canada with a great many funds before and afterward. "Jake" had the funds, and Surratt took seventy thousand dollars and thirty thousand dollars of the funds to "Jake." "Jake" had funds, and these men, who were poor and idle, doing nothing, and who entered into this horrid crime, expected the funds. If they had succeeded perhaps "Jake" would have divided the funds with them. I do not know how that would have been, but "Jake" had the funds.

"Burn this." Why did he want to have it burned? He had already said that it could not be understood if lost. But it was neither burnt nor lost. It went to its destination, and here comes up as a telling witness against this terrible crime. It lives, and cannot be blotted out. You cannot ignore it, and do not want to do so.

Yes, and he says, "I send this up by Tom, and if he don't get drunk you will get it by the 9th." He did get drunk, I suppose.

I come next to the evidence of Mr. Chester. Mr. Chester says (speaking of Booth) that the last time he saw him was on Friday, a week previous to the assassination. I will read:

"The last time I saw him was on Friday, one week previous to the assassination. I was with him nearly the entire afternoon. We separated at the corner of Fourteenth and Broadway, in New York city."

I wanted to show you that Booth was in New York City at that time—the Friday exactly a week before the assassination. This witness proves that fact. I now come down to what occurred at Mrs. Surratt's house after the murder, on the night of the 14th. I read from the testimony of Weichmann.

"The next morning about two o'clock I had been to the yard, had gotten to my room again, gone to bed, and was just about falling to sleep, when I heard the door bell ring very violently. It rang several times in very quick succession. There were only two gentlemen in the house at that time, to my knowledge, Mr. Holahan and myself. I drew on my pants, and with my nightshirt open in front, barefoot, I went down to the front door. I rapped on the inside of the front door and inquired who was there. 'Government officers,' was the reply, 'come to search the house for J. Wilkes Booth and John Surratt.' Told them that neither of them were at home. 'Let us in anyhow,' said they, 'we want to search the house.' I then told them it would first be necessary for me to ask Mrs. Surratt's permission. In order to do so I went to her bedroom door, which was immediately in the rear of the parlor, and rapped, saying, 'Mrs. Surratt, here are Government officers who wish to search the house.' 'For God's sake let them come in,' said she; 'I expected the house would be searched.'"

Why did she? Why, a few hours before she had been with Lloyd, and told Lloyd that the whisky-bottles and the shoot-

ing-irons must be got in readiness; that they would be called for soon. And you will remember that but a short time before her own son had taken tea for the last time with her alone, and left, as I shall show, on his awful mission. "I expected the house would be searched." She blurted that out. On the trial of Dr. Webster, if you remember that case, it appeared that he had cut off the head and the greater portion of the body of Dr. Parkman, and had destroyed them. When a portion of the body was found, and they went to Dr. Webster and told him of its discovery, what was his first inquiry? "Has it all been found?" Why did he say all? Would anybody else have said all? No; but he had cut it up, and he knew that the larger part had been destroyed, and unconsciously he thus gave expression to his first thought. "Has it all been found?" How similar the case of Mrs. Surratt in this expression: "I expected the house would be searched." They always do that, gentlemen—always, always, always.

The witness continues:

"The detectives commenced to search my room; they looked in the closet, looked under the bed, and looked all around. I asked them for God's sake tell me what is the matter; what this means; what means searching the house so early in the morning. One of them looked at me and said: 'Do you pretend to tell me you do not know what happened last night?' I said I did; I did not know what had happened.

"They appeared to be astonished that I had not known what had transpired. Then Mr. Clarvoe said, 'I will tell you,' and he pulled out a piece of a cravat; there was blood on it. Said he, 'Do you see that blood? That is Abraham Lincoln's blood; John Wilkes Booth has murdered Abraham Lincoln and John Surratt has assassinate the Secretary of State.'"

They supposed then that John Surratt was the one who had attempted to assassinate the Secretary of State.

Nobody then doubted that John Surratt was in the city that night. The counsel for the prisoner has said, "If John Surratt was here, why did not his friends come and tell of it? Why did not you put them on the stand?" We did not suppose that his sympathizing friends who wanted to shield him would come and tell of his presence here. If they had, they

would have received the same amount of abuse that Dr. McMillan and St. Marie have received for telling what the prisoner confessed to them. We did not expect his friends to tell of it. There were plenty of them, however, who knew that he was here, for everybody understood the fact at that time.

"I then went down stairs with Mr. Clarvoe and Mr. McDevitt. Mrs. Surratt just then came out of her bedroom. I said, 'What do you think, Mrs. Surratt, Abraham Lincoln has been murdered.' I did not say 'Abraham Lincoln; I said, 'President Lincoln has been murdered by John Wilkes Booth, and the Secretary of State has been assassinated.' I did not bring her own son's name out, from respect to her feelings; she raised her hands and exclaimed, 'My God, Mr. Weichmann, you don't tell me so.' She seemed astonished at the news. At this time Miss Surratt and Miss Jenkins were not down stairs.

The talk was about the murder; every one in the room had been told that Booth had done it; Anna Surratt commenced to weep, and said, 'Oh! ma, all this will bring suspicion on our house; just think of that man (we were speaking about Booth at the time) having been here an hour before the murder.' 'Anna, come what will,' she replied, 'I think John Wilkes Booth was only an instrument in the hands of the Almighty to punish this proud and licentious people.'

If you remember Booth's diary, he says the same thing. He says he thinks he was an instrument in the hands of the Almighty. That seemed to be the theory, that they were instruments in the hands of God. They had wrought themselves up to such a pitch of madness and frenzy that they finally made themselves believe that they were somehow instruments in the hands of the Almighty in this great murder.

I turn you now to the testimony of Colonel Smith, who searched this house. You will see it is very important. Let us see what occurred when he went to the house.

"Before ringing the bell I leaned over and looked through the blinds into the parlor, and discovered four females sitting close together, evidently in close conversation. From what occurred I should judge they were anxiously expecting some one. They were turning and listening from time to time as if waiting for somebody to come. I then rang the bell; somebody came to the window and whispered, 'Is that you, Kirby?'

"They whispered, in a low voice, 'Is that you Kirby?' I said, 'No, it is not Kirby, but it is all right; let me in.' She said, 'All right,' and opened the door. I stepped in, and said, 'Is this Mrs. Sur-

ratt's house?' She said, 'Yes.' I said, 'Are you Mrs. Surratt?' She said, 'I am the widow of John H. Surratt.' I said, 'And the mother of John H. Surratt, Jr?' She said, 'Yes.' I then said, 'Madam, I have come to arrest you and all in your house and take you down to General Augur's headquarters for examination. Be kind enough to step in.' She stepped into the parlor. There were three parties there; one was lying on the sofa. Said I, 'Who are these ladies?' She said, 'This is Anna Surratt, that is Olivia Jenkins, and that Honora Fitzpatrick.' I said, 'Ladies, you will have to get ready as soon as possible and go with me down to General Augur's for examination;' whereupon Miss Surratt commenced wringing her hands and said, 'Oh, mother, think of being taken down there for such a crime!' Mrs. Surratt stepped to her, put her arms around her neck, and whispered something in her ear, and she became quiet. I said to her that I had sent for a carriage, and to please to get ready as soon as possible, that I would send somebody with them down to headquarters.

"It was a quarter after ten. Mrs. Surratt said, 'I will go up stairs and get the ladies' things.' I said, 'I advise you to get warm wrappings, as it is a damp, drizzly night.' She said, 'I will go right up stairs.' I said, 'Excuse me, madam, this house is suspected; I will accompany you up stairs.' I told Clarvoe to remain in the room and see that no papers were destroyed, and that no communication passed between the ladies. I went up stairs with Mrs. Surratt. She obtained clothing for the ladies to go to headquarters. In the meantime two other detectives had reported, one by the name of Morgan and another by the name of Samson. I sent Samson down stairs to take charge of the servants, and waited for the carriage. Mrs. Surratt said to me, 'By your leave, sir, I would like to kneel down and say my prayers, to ask the blessing of God upon me, as I do upon all my actions.' I told her certainly; I never interfered with any such purpose. She knelt down in the parlor and prayed. In the meantime I heard steps coming up the front steps. Wermerskirch and Morgan were in the upper part of the house with me. I told them to go behind the door, and that when they rung or knocked, to open the door and let them step in, whoever it was, and I would meet them in the hall, thinking at the time it was Kirby that I was going to trap. I stepped into the parlor, and the door bell rung. The door opened. I stepped out into the hall and found myself face to face with Payne.' Payne was standing on the threshold of the door, with a pickaxe over his shoulder. I stepped out and met him. He said, 'I guess I have mistaken the house.' I said, 'You have not.' He said, 'Is this Mrs. Surratt's house?' I said, 'Yes.' He seemed to hesitate. I drew my revolver and cocked it, and said, 'Step in.' He stepped in immediately. I said, 'Lay down that pickaxe.' He laid it down, or put it in the corner. I took him to the back part of the hall and set two men to stand guard over him. We then commenced questioning him and examining him. I asked him where he had been. He said he had been working on the railroad and canal; that he had been working in different parts of the city.

I asked him how long he had been here. He said a week or ten days. I asked him if he had any papers with him. He said he had a pass, which he took out and handed to one of the officers, who passed it to me. I looked at it and found it to be an oath of amnesty or an oath in which he bound himself not to go south of the Potomac, I think.

"I then told him he was so suspicious a personage, that I felt bound to arrest him and send him down to General Augur's headquarters. I sent for a carriage immediately. I left him in charge of two men, and went down stairs to search the premises.

"I asked Payne what he had been doing. He said he was a laboring man. I asked him where he lived. He said he could not tell. I asked him whether it was east, west, north or south. He said he could not tell me where he lived. I asked him what he came to Mrs. Surratt's for at that hour of the night. It was then verging towards eleven o'clock. He said he came to get instructions about digging a ditch in the back yard. I asked him what he came at that hour for to get instructions about digging a ditch. He said he didn't know; he was passing along. I asked him when he met Mrs. Surratt. He said he met her this morning, and agreed to dig a ditch for her, and that he wanted instructions to go to work the next morning. I then stepped to the parlor door and said, 'Mrs. Surratt, will you be kind enough to step here a minute?' Said I, 'Do you know this man? Did you hire him to dig a ditch for you?' She raised both her hands and said, 'Before God, I do not know this man; I have never seen him; I did not hire him to dig a ditch.' Shortly after that a carriage reported, and Mrs. Surratt and the three ladies were sent to General Augur's headquarters. A little while after Payne was also sent there in another carriage. Both carriages went in charge of detectives."

"Yea, all that a man hath will he give for his life."

"We found Mrs. Surratt, Miss Surratt, Miss Fitzpatrick, Miss Jenkins, a little colored girl asleep on the floor in the back room. We found Susan Ann Jackson, or a colored woman who said her name was Susan, a man down stairs, who she said was her husband." "Would you know this Susan if you were to see her?" "I think I would." "Did you ask Susan any questions?" "Yes, sir."

Now, gentlemen, I have to stop here a moment for the purpose of comment. The learned counsel, in the most vehement tones, the other day said: "If Susan Ann Jackson had told any of these officers, why did not the prosecution bring it out?" Did not the counsel know that we did try to bring it out, and they stopped it? If they do not, I will show it to them here in the record. They saw and you saw, gentlemen,

how desirous I was to get this fact out, that she had made this statement to Colonel Smith, and that he had in writing reported it to the War Department, and that he had it placed on file that very night. Now, let us see what they did:

"Did you ask her anything about John Surratt?" Question objected to by Mr. Bradley.

That is the reason we did not get it out.

I will read on:

"Mr. Pierrepont said he had the right to ask whether the witness had held any conversation; he had not asked what that conversation was.

"The court decided the question could be put in that shape."

Only whether she had a conversation with him, but not what the conversation was. The counsel on the other side objected to it. I wanted to bring it out, and as you will see here after I tried again to get it out. The counsel had forgotten this, of course. They must have forgotten it, or they would not have said that we ought to have shown it. There is some advantage in having a printed book of evidence in a long case like the present, for it tends to refresh our memories. In a case running through two months, like this, it is always to be excused if counsel should forget any of the testimony. For fear I might forget some of it, I early made the determination that I would state no evidence to you, nor comment on any, except such as I had read from the book, giving it word for word as it fell from the lips of the witness.

I tried very earnestly a second time to bring this evidence out, as you will see, but I did not succeed. The law did not permit it. The court ruled against me. If they objected, I could not help myself, and the court ruled right. My learned friend says that he did not forget, but that he was alluding to another matter. I shall take up that other matter when I come to Susan Ann Jackson's testimony.

Let me read a little further from Colonel Smith's testimony. I hope, if my friend has forgotten this, he will listen to it now:

"Did you question her?" "I did." "Did you question all the others?" "I questioned them all." "Did you make a written report of your examination at that house at the time?" Question objected to by Mr. Bradley as immaterial. Objection sustained.

Mr. Merrick did not make the objection, but Mr. Bradley did, and I was equally bound by it and by the court's ruling, whether Mr. Merrick or Mr. Bradley made it. I had proved that he did examine them, and then I tried to prove that at that very time he made a written report and put it on file, and which I had then in my hand, and they would not let me. They should not reproach us then for not bringing it out.

"Have you a distinct memory of what occurred at the time?" "I have."

(Question objected to by Mr. Bradley as improper on examination-in-chief.)

The Court said it was proper to ask a man whether his memory is distinct about what he says.

Now let us see whether this statement of Colonel Smith's is confirmed or not. I turn to the testimony of Captain Wermerskirch.

"When Payne came to the house he was asked to come in, because he refused to come in after he saw strangers present. After he came in he was asked what he wanted; he said he wanted to see Mrs. Surratt; he first inquired if that was Mrs. Surratt's house; he was then confronted with Mrs. Surratt, and she was asked whether she knew the man; she held up her hands and said she did not know the man, and called God to witness: 'Before God, I do not know this man.'"

I have said that the Bible states, "Yea, all that a man hath will he give for his life." She had been at prayer, and had just risen from her knees when she was called out into the hall. She then, in the presence of these men, lifted up her hands before her God and exclaimed, "I do not know this man." Human nature is indeed weak in such troubles, and I pass it by without further comment. Let us throw the veil of charity over it as far as we can.

"Major Smith told Mrs. Surratt and the other ladies—there were three of them—that he arrested them; that they were his prisoners; that they had to come up with him to the Provost Marshal General's

office. Thereupon Mrs. Surratt requested him to allow her to go up and get their cloaks and bonnets to put on. Major Smith told her she might go up there, and accompanied her himself. Mrs. Anna Surratt had been weeping a great deal and was quieted by Mrs. Surratt; what she said to her daughter I do not know, because she said it in a very low tone—whispered it to her.”

And against that poor daughter I shall never say one word. On the contrary, things have occurred in this trial, on that stand, which lead me to feel toward her the kindest feelings. I would help her in any way with my counsel or my purse, and I would never hurt a hair of her head.

“She then asked Major Smith’s permission to kneel down and pray, and she thereupon knelt down. Shortly thereafter they left. We had sent for a carriage in the meantime, and the carriage had got there, and they were sent up to headquarters. After prayer, she came out in the hall; she went through the hall and entered a carriage. It was at that time she saw Payne. The remark to which I have already testified of Mrs. Surratt—her denial that she knew Payne—was made after this.”

Now I come to the testimony of Colonel Morgan.

“I directed that Mrs. Surratt and all the others in the house should be sent up to the Provost Marshal’s office. They hesitated about going. I told them they should not delay, but go right away. I told Mrs. Surratt to go up stairs and get the bonnets and shawls of the rest of the party. She did so, I sending an officer along with her. She got all the things, and brought them down in the parlor, where they prepared themselves to leave. When they were about ready to go, she said something about it being a cold, damp night. I said I would send for a carriage, and immediately directed one of my men to go and get one. About three minutes before he returned there was a knock and a ring at the door. I was at the time standing by the parlor door. I instantly stepped forward and opened the door, thinking it was the man returning with the carriage. Instead, however, of it being him, a man entered dressed as a laboring man, with a pickaxe over his shoulder. As soon as he saw me he stepped back and said, ‘Oh, I am mistaken.’ Said I, ‘Who do you wish to see?’ He said, ‘Mrs. Surratt.’ I replied, ‘It is all right; come in.’ I passed him in, and put him behind the door, standing myself with my hand on the door, open. I said to Mrs. Surratt, ‘Are you ready?’ and then remarked either to Major Smith or one of the clerks standing there (I cannot now say which), ‘Pass them out.’ As they were about starting, I looked around, and saw Mrs. Surratt just getting up from her knees and crossing herself. I said, ‘Hurry up and get along; the carriage is waiting.’ I sent a man off

with them to the Provost Marshal's office. After I passed them out I commenced to question Payne. After she got up from her knees, Major Smith made some inquiry as to whether she recognized him. I did not hear exactly what he did say, nor the reply she made."

That has been told you by Colonel Smith and Captain Wermerskirch; but let us see what she said to Colonel Morgan, as she passed out:

"She leaned her head over toward me, and said, 'I am so glad you officers came here tonight, for this man came here with a pickaxe to kill us.'"

Then he says further:

"Payne was close up to me. He did not make any reply when Mrs. Surratt said to me, 'I am glad you officers came here tonight, as that man with a pickaxe came to kill us.'"

Now, gentlemen, a great many things have been going on in this brief time over which I have passed. Where was John Surratt all this time? I do not need to tell you that no man can be in two places at the same time. That you will all admit is not within the range of possibility. It does not need any proof; it is a demonstration; it needs only to be asserted. He was somewhere; where was he? That is the question. Two points in this case are fixed, and about them there is no dispute—that he left Montreal on the 12th, and returned to Montreal on the 18th. Between those two dates all these things of which we have spoken relating to this murder were done. Where was John Surratt all this while? Was he in Canada? They could very easily tell you where he was every hour from the 18th till he left on the steamer to go to Europe, could they not? There was no difficulty about that. He was at Porterfield's, at Boucher's, and at LaPierre's. They could tell us where John Surratt was every day and every hour between the 18th of April and the middle of the next September, when he fled in disguise to Europe. Cannot they tell us where he was between the 12th and 18th—only six little days? Where then, I ask again, was their client, the prisoner, when he fled in disguise to Europe. Cannot they tell us

that? Why not tell us that? He slept somewhere, did he not? He ate somewhere, he saw somebody, he stayed at some house. He was in some wood, some field, some village, some city, somewhere. They can give us his place every day and hour for five months afterwards; but on those little days on which hangs the verdict for his life, they cannot tell us where he was. Why not? Why cannot they tell us where he was on the 16th, the 17th, or the 18th? Why cannot they bring us the man in whose house he slept, the servant who made his bed, who brought him his water, the barber who shaved him, the person of whom he bought an apple, a meal of victuals, or a ticket, or something? Why do they throw a thick veil of night over those six awful days? What is the reason, gentlemen? He knows where he was, does he not? He knows every step he took. He knows every hotel in which he slept. He knows every place where he got food or drink, and yet he does not tell you one of them, as I shall presently prove to you. Dr. Bissell tells us one. I shall take him up in due time. They did not handle Dr. Bissell much. He being a citizen of my State and a neighbor, I shall feel more or less responsible for what I say in regard to him. I shall talk about my neighbor somewhat, and shall present his evidence to you in the course of what I have to say.

But laying that aside, where was John Surratt? The books of law which I have read to you say that when an *alibi* is attempted after the Government have shown the party present where the crime was committed, the prisoner must prove beyond any possibility of doubt that he was somewhere else. That is the law. My friends on the other side have admitted that, and said they found no fault with it. It is, then, for them to show where he was, if they know; and if they do not know, it is because they have not tried to get the information, for their client knows. Have they shown you where he was? Have they shown you what road he took, to what point he came from Montreal, where he stayed, in whose house he slept? Have they brought one human being that ever saw him before, in whose house he ate, in whose house he slept, who

traveled with him by water or by fire, by horse or by carriage? Not one.

Now let us see if we can find out where he was, as they will not tell us. I am sure I know where he was, and I am just as sure you will know where he was, if you do not know now, when I get through reading this evidence. I want to call your attention to this remarkable circumstance that occurred in the taking of this evidence. I do not know whether it arrested your attention at the time or not, but you will remember it when I recall it to your minds. For some reason, which I did not then understand, but which was fully revealed in the progress of the case, Mr. DuBarry was put by the defense upon the stand, and brought his records of the railroads between Elmira and Baltimore. I afterward put him on the stand, as you will recollect. Why was this railroad superintendent, who did not profess to testify from his knowledge, but from the records which he there had, called by the defense? To show that between Elmira and Washington, in consequence of the freshets that had been sweeping away all the bridges, railroad connections, etc., there was no railroad communication by which means Surratt could have come from Elmira on the 13th and reached the city of Washington on the 14th. After Mr. DuBarry had testified, you remember, the senior counsel, in the argument which he made to the court, said not only once, but repeatedly, "We have shown it was a physical impossibility that he could have come from Elmira on the 13th and reach here in the forenoon of the 14th." He said it with confidence, perhaps with effect. It would be effective if it were true. We knew it was not true; we thought we could prove it was not true; and we undertook to prove that it was not true, and found ourselves in great trouble. Although we got the original books from the very conductor who drove the trains, yet when the man who was brought here to prove them was cross-examined, it turned out that he did not himself make the original entries, and the court ruled the evidence out. The court did right. Then we tried to get the men themselves. They would not come, and

in your presence and before the court we made the proof of that fact and sent out a process of attachment to arrest those men and bring them here. I made a remark on that occasion which was printed in this case, that every impediment had been thrown by that road in the way of our getting at the facts connected with the movement of those trains. That remark got into the newspapers and produced the effect which I will presently show you, and a pretty strange effect it was. I will now read DuBarry's first examination when he was put upon the stand by the defense and before I made these remarks which are printed here in this case.

"Turn to the 13th, if you please, and see if any train left Elmira, coming south, after twelve o'clock on the afternoon of the 13th? There is no record of such a train."

Well, I did not understand that. I knew, if human testimony was to be relied on, that Surratt did come on a train here from Elmira, and that from the depot he went to a barber-shop and got shaved, for we had any number of witnesses who saw him. But the witness stated that there was no record of a train leaving Elmira coming south after twelve o'clock m. on the 13th. There was not. No such train did come. What does it all mean? It looks well enough, does it not? There was not any perjury in that. No train did leave there after twelve o'clock; but a train did leave Elmira at half-past ten o'clock, and that was the train Surratt was on, as we have proved.

"No train leaving Elmira after twelve o'clock on the 13th? Now, what time of day on the 13th and 14th did the trains coming south leave Elmira? The schedule called for a train leaving there at eight o'clock in the morning."

Very likely the schedule did. There was not any perjury in that either; but it is not very fair when a special train left at 10:30 o'clock to say nothing about that, but to state that the schedule time is eight o'clock, and that no train left after twelve o'clock. The law says that the suppression of a truth is as great a lie as the statement of a falsehood.

Now, I take up the cross-examination:

"Do you say that there was no train running through from Elmira with soldiers on that day? The Court. Which way? Mr. Pierrepont. This way, coming south on the 13th? I cannot say that there was no train with soldiers."

At that time I did not know, and my friend the learned district attorney did not know, exactly what time this train left; but we found it out afterwards, as we shall show. The schedule time was eight o'clock, and no train did leave after twelve o'clock, but a special train left at 10:30 o'clock, and he came on that special train. Now let us read further:

"On the 13th, 14th and 15th the road was partially repaired, and one train was running through daily; they ferried. I went over the ferry myself on the 14th."

Will you note this, gentlemen? You will see something in it before I am through.

"But you were not at Elmira on the 13th? No, sir. Were there any trains that did not run on schedule time? I have no record of them. Were there any? Not that I am aware of."

How did that leave the case? It left it without any evidence of this 10:30 train, and it left it in positive words that this Mr. DuBarry was not at Elmira on the 13th. Was he? We will see what occurred after this remark of mine—of which I have spoken—got into the newspapers.

I will read a little further from the testimony of Mr. DuBarry. He says:

"I have no record of them."

Well, we did not say he had.

"Were there any? Not that I am aware of. When interruptions of schedule time occurred on one part of the road it would affect it on the other, wouldn't it? Yes, sir. Suppose this to happen—that a train running from Elmira should leave Elmira at 7:20, and another train, a slower train, should leave at 12:20, and this slower train, by reason of some detention of the express train, should overtake the express train at a distance of fifty-eight miles from there, and the passenger should get on to the express train; it would make a difference, wouldn't it? They would arrive at their destination sooner? Yes, sir."

I will turn you presently to the examination of this same witness, DuBarry, when we called him back.

We finally succeeded, after much trouble, in getting Mr. Rogers, the very engineer who ran the special train the other way, and who met him at Troy on the 13th. In that way we got at the correct time, showing that he left Elmira at 10:30 on the morning of the 13th, the time Rogers going up met him at Troy, and the fact that DuBarry was in Elmira. We will see presently what Mr. DuBarry says about that. He says he was mistaken. Well, he was. He says he had promised to be there, and believes he was there. Then he was mistaken.

We brought Surratt across the ferry. Two men saw him. The witness Drohan took him across alone, going up to him, when in the middle of the stream, and collecting his fare. He talked with him, and looked him directly in the face, and the moment he entered this room and saw the prisoner he said he recognized him as the same man. He was not cross-examined by the learned counsel for the defense; but immediately upon the conclusion of the examination-in-chief Mr. Bradley said, "Get away; I don't want any more of you." My friend Mr. Carrington pronounced that to be acting surpassing anything that Forrest ever performed. I do not know anything about that, for I do not understand that kind of thing. I merely have a way of talking on the evidence, and trying to present it to you in a way that may aid you all I can, with my responsibilities before you, before my fellow-men, and before God, to help you to arrive at the truth. I thought it strange that counsel did not cross-examine him, but I concluded that the prisoner, when he saw the face of that old Irishman, and recalled the fact of crossing the ferry with him alone, and having a conversation with him about the price in the middle of the river, knew he would only clinch the nail the tighter by cross-examination, and therefore the counsel very wisely refrained. They thereby prevented me from bringing out a good many striking things which I should have done if a cross-examination had been had. Whether it was acting or not I do not know, but I can say this, it was very shrewd and

skillful in them, and the counsel deserve credit for it as a professional exhibition.

After we had examined these other witnesses, and after the remark to which I have alluded appeared in the newspapers, we called Mr. DuBarry, and he told us all about it." We were a great deal bothered at first about this "physical impossibility" of getting the prisoner from Elmira to Washington, in regard to which the counsel have said so much. We knew that he did get here, but we were not able to show how he got here. We were trying, but we did not get along very well. Finally, one morning, you may have noticed that, when we were about to commence with the proceedings of the day, I suddenly got up and went out of this room, and in about ten minutes as suddenly returned with Mr. DuBarry, their witness, whom they had put upon the stand, and who had said that he was not in Elmira on the 13th at all, and who had further stated that there was no record of any train after 12 o'clock on that day. Mr. DuBarry took the stand, and told us the whole story, and here it is.

"Won't you tell the jury what railroad connection there was between Sunbury and the city of Washington on the 13th and 14th of April, 1865? What were the modes of getting to Washington?"

Then he went on and told the various modes and told them fairly. I have no fault to find with Mr. DuBarry. When his mind was refreshed he remembered all the truth, and he came here and told it to you and to me, and there it is, and it is all right, just as the truth was:

"I would at this point like to correct some evidence that I gave when I was on the stand before. The question was asked me as to whether I was in Elmira on the 13th. I answered, 'No, sir.' Since that time I have sent for the telegraphic dispatches of that date, and I find that I promised to be in Elmira at that time; and I believe I was in Elmira on the 12th and 13th.

Gentlemen, was my statement to you incorrect? Was not it as I have now read it? Let us see:

"Will you tell us when the freight train left Sunbury on the afternoon of the 13th of April, 1865? At 4:30 p. m., by the record."

We could not get that before. Let us go a little further:

"A passenger train left Sunbury, by the record, at 12:13 on the night of the 13th and the morning of the 14th; it reached Baltimore at 7:25 on the morning of the 14th."

My learned friend's physical impossibility instantly vanished into thin air with that testimony. After it was given you heard no more about the physical impossibility of the prisoner's getting from Elmira to Washington at that time. DuBarry put that matter all right.

Now, we will see what the railroad man who brought it from Baltimore here says. "Physical impossibilities" always get out of the way somehow or other where there is truth. I never knew a case where they did not. I have had a great deal of trouble often before in getting at them. All I want to know about a case is whether it is true. If it is true, as I have said, every other truth is in harmony with that truth, and by diligence and toil and earnestness and ceaseless vigilance I shall find out the truth, and I have found it out here. I read from the testimony of Mr. Koontz, who had charge of the railroad from Baltimore here on that day.

"Tell me at what time the first train left Baltimore on the 14th. At 4:20 a. m., and reached Washington at 5:45 a. m. When did the next leave? 5:30 a. m. When did that arrive? 7:20. When did the next leave? 7:00 a. m. When did that arrive in Washington? 8:43 a. m. When did the next train leave? 8:50 a. m. When did that arrive? At 10:25 a. m."

Mr. Bradley. Now get him to the barber-shop and have him shaved at nine o'clock.

Mr. Pierrepont. Most beautifully will I get him there, and so smoothly, that you will see him shaved without a quiver. We have got him in Washington, and now my friend is a great deal troubled about the barber-shop. I am going to take him to that barber-shop, and if I do not get him shaved there so clean that he will not want shaving like that again for some time, I shall be sadly mistaken. But let us see whether he was on the train or not, because he did not get to

the barber-shop unless he was on the train. I call your attention to the testimony of Mr. Strayer:

"On 13th April, 1865, I was in Elmira. I was twenty-five miles south of there about half-past eleven; suppose I left there about ten or half-past, on a special train; the second section of the mail, to Williamsport, directly south of Elmira."

Now, in order that it may be fresh in your memories, I want to call your attention to these places. (Pointing to the places named on a large map on the wall in front of the jury.) There is Elmira, and there is Williamsport, directly south of it. Midway between—twenty-five miles from Elmira—where this witness says he was at half-past eleven, is a place called Troy. It is not put down on that map. This is merely to show the relative positions of these places. There is Elmira; there is Williamsport, directly south; here is the Susquehanna river, across which is the ferry; there is Harrisburg; and there is Baltimore—as straight a line almost as you would shoot a gun from Elmira to Harrisburg and Baltimore. Now we will go on with Strayer's testimony:

"The distance between Elmira and Williamsport is seventy-eight miles; I met the mail north; the conductor was Mr. Rogers at Troy. Troy is between Elmira and Williamsport, twenty-five miles south of Elmira."

As I have said, all I want to know is that a thing is true. If it is true, something will turn up to prove it. Here was Strayer, who left on that day in this special train to come south, and it so happened that Rogers was going the other way, and met him at this point—Troy—and a conversation occurred between them in relation to the speed and in connection with DuBarry, who had gone up there the day before, and tells you he believes he was there on the 13th. These things always happen; they are not strange, because they are the ordinary things of life occurring where truth is, never where falsehood is. No two falsehoods are consistent with anything; each truth is consistent with everything.

"Can you tell exactly the hour when the two trains got there? It was between the hours of one and two o'clock that I got to Williams-

port? Did you go no farther than Williamsport? No. You took passengers? I was the second section mail. The first train took the mail and the passengers. Do you know a ferryman at Williamsport who was ferrying there at that time? Yes. What was his name? There are two; one's name is Bligh, and the other has a funny name; I cannot remember it. Was it Drohan? Yes, sir; some such name. Are you still in the employ of the railroad company as engineer? Yes, sir."

Now we have gotten him started on the way.

"Did you take passengers from Elmira that day or not? I do not remember. I was not in the caboose that was attached to the train. There was no one on the engine. They were not allowed to ride there. When you stopped to take in water, did you not know whether there were passengers? I do not know. I did not take notice; I took charge, as there was no conductor. There were no tickets sold for that train. According to the best of your recollection, there were no passengers on that train? I don't know. I was on the engine. There were none there. If there had been no conductor would you have collected the tickets? No, sir. Who would? Whoever was back in the caboose.

Now here is the cross-examination:

You say you had a caboose on the train; tell us what that is? It is like a freight car. It was a soldier's car, and we used it as a caboose on these trains. What was that train run for? It was to take Mr. DuBarry, the superintendent of the road to Elmira."

He went there on the 12th and returned on the 13th, and his telegraphic dispatches afterwards reminded him of it, and he says, "I believe I was there, for I promised to be there, although I cannot remember it." We have nothing to say about Mr. DuBarry. He has told the truth, and all of it.

"Don't you know it was against the rules to carry passengers on the freight trains? No, sir; that was not the rule on that road."

Now we will come to Mr. Rogers, and see whether he confirms this:

"Know Mr. Strayer; met him going south at Troy, at 11:35."

Which, as you see, is twenty-five miles south of Elmira, on the way to Williamsport.

He met him twenty-five miles from Elmira, on his way to Williamsport, at 11:35.

Now we will go a step further, gentlemen. I read the testimony of Mr. Glines:

"In April, 1865, collected fares on the ferry across the Susquehanna at Williamsport; Mr. Drohan ran the boat—a rope ferry. A train was there on 13th April, 1865. There were two construction trains on the road between Williamsport and Sunbury."

I turn you now to the testimony of Mr. Hepburn, who was train-master. He says:

"Two construction trains were running between Williamsport and Sunbury. They had the right of the road to work from morning till evening, keeping out of the way of the regular trains. They had orders to carry passengers through to any point they run to. The running time for a passenger train was an hour and forty minutes. The gravel train, with an ordinary load, would run it in a little over two hours, from Williamsport to Sunbury. Passengers frequently came through in that way. The train went from Watsontown to the bridge, and back again, as occasion required it. There was no time for starting, arrival, or any thing else; they were merely required to keep out of the way of the passenger trains."

I now read the testimony of Mr. Westfall:

"At Williamsport, from the ferry to the depot where the trains coming from Elmira stop is about three-quarters of a mile; was there when the trains arrived from Elmira that day. There were two trains that arrived between twelve and two. One of them was the eight o'clock train from Elmira. The special train arrived at 12:30."

This was that special train, that we had such special difficulty in getting before you, but we did get it.

"After the arrival of that train a man came to me who was very anxious to get through. He asked some questions with regard to the train. He inquired what would be the probable chances of getting over the line. I took him to be either a rebel spy or a government detective. I cut him off very short—did not give him much satisfaction; because I thought it was none of his business as to how we run our trains at that time. The prisoner is the man; that is my impression."

There is a great difference in men in the way they will state a thing positively or not. The question asked this witness by the court is, "Have you seen anybody since that you believe to be the man?" "Yes, sir, I have." "Do you see

him now?" "Yes, sir." "Do you know the prisoner?" "The prisoner is the man; that is my impression." That is the way I should swear about anybody. Some people who would be more positive would say so more positive. Some men, when they desire to express their firm conviction of a fact, will do so by saying they "think" such is the fact. Others will say, "It is the fact." For instance, my confident belief is, that there has been no day in these many weeks in which every man of you has not been in his seat. I believe it is so, and yet if I were called to-day and put upon that stand and asked to swear whether every man had been here the whole of the time, or whether one day after recess one man was not absent, I would not swear positively that you had each one been here every hour. I believe you have been; I think it is so, and in that way I should swear. But some men, with the same knowledge, would be more positive than I, and say yes, they knew it was so. There is a difference in men in their modes of expression. It is my confident belief that you have all been here. I have not watched you every hour. I have been busy with witnesses; and yet if I came on the stand and said under oath that no man had been absent an hour during this trial I should hope to be believed, not because I said I knew positively, but because that was the best of my belief. In my judgment, that is the strongest kind of evidence we ever have.

"Do you know whether they were ordered to take passengers? Yes, sir; they were at that time, because the road had been obstructed. We gave the men orders to carry persons going from one point to another."

These construction trains, as you see, all had orders to carry passengers, because the roads were out of order.

"These construction trains were running at a very rapid speed at that time, because, as a general thing, when we wanted any thing, we would go in a good bit of a hurry for it, and in getting things for the bridge it was very necessary to lose as little time as possible."

Now, gentlemen, I have read to you what this man Mr. Westfall, the train-master, said of the conversation he had

about the trains with the prisoner, and I have proved by all these witnesses that Drohan was then the ferryman. Now I come to Drohan. Let us see what he says:

"On the 13th, 14th and 15th of April, 1865, I ran the ferry across the Susquehanna at Williamsport. Do not remember a special train coming in from Elmira on the 13th. I remember a man coming to be ferried over. I was on the other side of the ferry—on the Williamsport side—the same side as Elmira, when the man came to me and asked me to ferry him across to this side. I asked him if he would pay if I would ferry him over and he said yes. He had a peculiar coat on."

Their witnesses have all told you that. They have taken great pains to call your attention to it, too.

"He asked me to ferry him across to the other side. I told him the charge would be fifty cents. In the middle of the river I generally made it a rule to stop the ferry to get my pay, when the party had not a ticket of the company. He gave me a dollar bill, and I had no change, and I kept the dollar bill; he said that I might have it.. (Pointing to the prisoner.) To the best of my belief, that is the man."

You remember that man's face that they call the Gunboat. It did not look as though it would tell a lie. They did not bring anybody to say that the mouth that belonged to that face ever did utter a lie. When he came into this room and put his eye upon that young man, whom he took alone over that ferry on that day, a thing so marked, taking his pay in the river, and taking double fare, he would be very likely to remember him, as the other man who had seen him before remembered him; and he did remember him; and I imagine that the prisoner remembered him. I judge so, and have a right to judge so from the manner in which the counsel handled that witness. Let us see what he said:

"Cross-examined by Mr. Bradley: Who brought you here? The authority of the government. Who came after you? I don't know the gentleman. A young man or old man? A middle-aged man. Do you see him in court? Yes, that is the gentleman. (Pointing to Colonel Montgomery.)

"Mr. Bradley: (To witness.) You may go; get down from that stand; I don't want any thing more of you."

The District Attorney says, "That is acting better than any that Edwin Forrest ever performed." I do not know whether it was acting or not. The District Attorney said it was, and turned to the counsel and said, "I know you." Well, I do not know him. My acquaintance is only so far as this trial goes. I did not know it was acting, but those who do know say it is.

We have now got him started along on a train which could bring him from that point into Washington without any difficulty whatever about ten o'clock on the morning of the 14th. That has been proved through much tribulation. There has not been any witness to doubt Mr. Westfall, who told you that the prisoner was the man he saw who was making inquiries of him, nor any man to dispute Drohan, who told you he was the man he took over the ferry. Nobody has thrown any doubt over their testimony nor over their characters. They were in the employ of the road, and could have no possible object in coming here to give this testimony if it was not the truth. We sent for them, and they came and gave their testimony—testimony that will stand the test of truth when you and I and all appear before the great judgment seat.

We have now got the prisoner here at 10:25, and are on the road to the barber's. I now propose to turn to the barber's testimony. He was an early witness in this case, and there has been plenty of time for them to learn who he was, and how long he had lived here, and what was his character for truth and veracity; whether he was a bad or a good man, and whether he was a Protestant or a Catholic. No doubt they did inquire about all these matters, and they did not attempt to bring a witness against Mr. Wood. Now let us see what Wood tells us happened on that morning. It is one of those things about which there could be no mistake. He has either perjured himself, or else he has told the truth. He could not have been mistaken. I continue:

"Am a barber by trade in the city of Washington; since December, 1862, worked at Messrs. Booker & Stewart's barber shop on E street, near Grover's Theater; knew Booth by sight before the as-

assassination; cut his hair frequently; shaved him; have seen that man (pointing to the prisoner) before. On the morning of the assassination, at Mr. Booker's barber shop, shaved him and dressed his hair. Mr. Booth came in; there were four persons who came together; the four persons beside Booth and Surratt were a gentleman I take to be Mr. McLaughlin; they called him 'Mac;' the conversation was in reference to Baltimore. Between Mr. Booth, Mr. McLaughlin, and Mr. Surratt; the other gentleman that was with them had nothing to say; he sat down nearly in the rear; never saw either of the parties afterwards except this gentleman. (The prisoner.) The other man I did not know. He was a short, thick-set man, with a full, round head; he had on dark clothes, which we generally term rebel clothes, and black slouch hat. I cut Booth's hair that morning. Whilst I was waiting on Mr. Booth, Mr. Surratt was sitting just in the rear of me; the thick-set man was sitting to the left of the looking-glass, just in the rear of my chair. The glass was next to the wall, and Mr. Surratt was on the right side of the glass, the other one on the left hand. There were not any words particularly that I remember said or interchanged; but when I had got through waiting on Mr. Booth, he (Mr. Booth) got out of the chair and advanced toward the back part of the shop; Mr. McLaughlin was in that direction doing something about the glass. Mr. Surratt took my chair immediately on Mr. Booth's getting out. During the time that I was spreading my hair-gown over him and making other preparations for shaving him, this other young man, rather tall, with dark hair—I think not black, but dark-brown hair, rather good looking, with a moustache—was figuring before the glass; he had on a black frock coat, and putting his hand in his pocket he took out two black braids; one of the braids with curls he put on the back of his head, allowing the curls to hang down, he then took the other braid and put it on the front; it had curls also, and they hung on the side. When he had done this, he said, 'John, how does that look?' I do not know whether it was Mr. Surratt or Booth, but in making the remark he said 'John.' I turned round and said, 'He would make a pretty good looking woman, but he is rather tall.' Says he, 'Yes,' in rather a jocular manner, laughing at the time. He seemed to look taller to me when he put on these curls than he did before, though I had not taken particular notice of him before that. This time Mr. Surratt said to me, 'Give me a nice shave and clean me up nicely; I am going away in a day or two.' He seemed to be a little dusty, as though he had been traveling some little distance, and wanted a little cleaning and dressing up, as I am frequently called upon by gentlemen coming in after a short travel."

He had just come in from Baltimore. He had come from Elmira, the train brought him right here, and he went to the barber-shop to be cleaned up.

"He asked me if I noticed that scar on Booth's neck. Says I, 'Yes.' Says he, 'They say that is a boil, but it's not a boil; it

was a pistol shot.' I observed, 'He must have gone a little too far to the front that time.' This gentleman (Mr. Surratt) observed, 'He like to have lost his head that time.' I then went on and completed the shaving operation. I shaved him clean all round the face, with the exception of where his moustache was. He had a slight moustache at the time. After I was done shaving I washed him off in the usual way, dressed his hair, and put on the usual tonics and pomade."

I shall have occasion to allude to that when I come to the testimony of another witness in this case, who spoke of his hair looking as though it had been dressed at the time he saw him.

"Think it was near about nine o'clock. I had had my breakfast; had been up to Mr. Seward's and had come down again; found Mr. Seward in his room; Mr. Stanton called. Mr. Seward was either on the bed or on the chair by the bed when I shaved him."

You saw that man, and you heard his testimony; you heard all these little circumstances that he narrated, and you believed him, ever man of you. He could not have been mistaken, and he did not perjure himself. Now, I repeat, the "physical impossibilities" of which the gentleman has spoken are out of the way. We will come presently to the moral impossibilities, and see where they lie.

August 6.

Mr. Pierrepont. Gentlemen, you will remember that the other day, in response to an inquiry by Mr. Merrick, one of the counsel for the prisoner, asking why we did not produce the record of the conspiracy trial, I brought the original record here and handed it to the counsel. I then stated that, as part of that record was a suggestion made by some of the members of the court that tried the conspirators, if the President thought it consistent with his public duty they would suggest, in consideration of the sex and age of one of those condemned, that a change might be made in her sentence to imprisonment for life. I stated that I had been informed that when that record was before the President, and when he signed the warrant of execution, that recommendation was then before him. I want no misunderstanding about that, and do not intend that there shall be any. That is a part of

the original record, which I here produced in court. It is in the handwriting of one of the members of this court, to wit, General Ekin. The original of that is now in his possession, and in the handwriting of Hon. John A. Bingham. When the counsel called for that record, I sent the afternoon of that day to the Judge Advocate General, in whose office the records are. He brought it to me with his own hand, and told me with his own voice, in the presence of three other gentlemen, that that identical paper, then a part of the record, was before the President when he signed the warrant of execution, and that he had a conversation with the President at that time on the subject. That is my authority. Subsequently to its being presented here the Judge Advocate General called to receive it back, and reiterated in the presence of other gentlemen the same thing. That is all my knowledge, gentlemen. This is a matter which has nothing whatever to do with this case; but the counsel called for the record, and it was for that reason produced.

I come now, gentlemen, to where we left off yesterday, which was the testimony of Wood, the barber, who shaved this prisoner after his arrival from Baltimore on the morning of the 14th. I had already said to you that a man could not go through with what he went through—shaving the man, cutting his hair, having all this conversation he had with him in relation to Booth's wound, and in relation to the other things that occurred in the shop—and be by any possibility mistaken. He shaved him, he cut his hair, he dressed his hair, had these conversations that I speak of with him, noticed that he came in very dusty, as if from travel, and he could not be mistaken.

Now, the gentlemen say that he was not there at the exact hour the barber said he was. That is the only criticism they have ventured to make upon this subject. Gentlemen, I will undertake to show from this evidence—under any fair construction of it—that he was there at the very hour he stated. Now let us see exactly what he did state.

"Think it was near about nine o'clock. I had had my breakfast."

That is all he says on the subject of time. Now let us see further:

"I had been up to Mr. Seward's, and had come down again; Mr. Seward was in his room, third story. Mr. Stanton called. Mr. Seward was either on the bed, or on the chair by the bed, when I shaved him. I do not remember now exactly which."

Now, let me call you back, gentlemen. This, you will remember, was on the 14th of April. We were then in the shorter days of the year. The witness does not undertake to fix the exact time; nothing occurred by which he could fix the exact time; he only gives us his general impression as to about when it was. He tells you he had had his breakfast; that he had been clear up to the house of Mr. Seward, who was then, as you know, enfeebled from the accident he had met with. He shaved him in his bed, or on the side of the bed. He had gone through all that operation, met the Secretary of War there, and had returned to his shop before this occurred. Now, what would be the natural time, in the natural progress of events, in that season of the year, when he would get back to his shop? I ask you, as men of good sense and men of fairness, to tell me. It is not of the slightest consequence whether he thought it was somewhere about nine o'clock, or somewhere about ten o'clock. It was undoubtedly a little after ten o'clock, which would be the natural hour for such a thing to happen. I ask you, as fair men, what you think about that? Does it strike you that I am presenting this in any unfair, or unreasonable, or improbable way? I am sure you do not think so. The witness did not attempt to fix the time, but the facts were the things, and those are fixed.

Now the only defect in the defense on this subject was, that they did not undertake to call little Hess, the little fellow you saw on the stand with blue-black hair, very heavy black mustache, and very dark swarthy face, to personate Surratt, as he did pretend to personate him in front of the theatre. They ought to have had Hess here to state that he was the one Wood had shaved. They had Hess for another purpose, to which I am presently coming. You saw Hess. You saw

whether he, with his black eyes, black hair, swarthy face, and heavy mustache, looked much like the prisoner at the bar.

I now come to the testimony of Rhodes. You just saw what kind of a man Rhodes was. I think men of your sense in seeing a witness in that way can tell a great deal about him. He was what we call in my country a prying, curious Yankee, moving about, a mender of clocks, having a curiosity to go around into different places, and see what he could see; and in his going about he came to Ford's Theatre and had a curiosity to go in and see it. The other side undertook to show by Mr. Ford (who, when I came to cross-examine him, admitted that he was in Richmond at the time) that he could not have gone into the theatre, because it was locked. It finally turned out that the theatre had four doors besides the side doors, and I engage that that Yankee could have got in somewhere if he had tried, and that he did get in. Had he any object to come here and tell a falsehood? He was not paid for it, nor did he get a job of mending anybody's clock by it. It was the most natural thing in the world for a man like him to do exactly that. Moving about, he came to that theater, and seeing a chance to go in, his curiosity led him in. He talked about the picture of the scene. He did not know the difference between the curtain and the scenes that shove together, as it finally turned out; for it was the stage scenery he saw when they were carrying on this rehearsal and described as a curtain. He is not a man of much money, I fancy, nor much in the habit of visiting theatres; but he had a curiosity to see how this theatre looked, and he went in there, and he came and told you just what occurred. Now let us see whether he told you the truth or not.

"As near as I can impress it upon my mind, it was within half an hour of twelve o'clock when I entered the building."

You will notice that this rehearsal, which they admit commenced at ten o'clock, was that of the American Cousin, which lasts about an hour and a half.

"I went in merely to look at the theater. I went up the steps to the second floor; went down in front where the circle was, to look

upon the stage; whilst there I saw one of the box doors open a little and shut. I was anxious to see from that point of view, and supposing some one was in there, having heard some one stepping about, I went down to the box and looked out from that point. As I approached the box whoever was in there walked away out of the box, and I entered and looked from that point on the stage. I had been looking there about a minute or two when the same person, I suppose, who went out of the box returned and spoke to me. He said he was connected with the theater. We then had a few words together, when my attention was again drawn to the scenery on the stage. They had a curtain down that had recently been painted, I believe, and I stood there looking at that. Then I heard this man behind me doing something. In turning around to see what it was he was doing—I supposed he was looking down as I was—I noticed that he had a piece of wood; whether he had it put under his coat or was taking it out I cannot say. The piece of wood was about three feet long and about as wide as my two fingers—may be a little more in the center—slanting a little towards each end from the center. As I turned round he said, 'The President is going to be here tonight.' That was the first intimation I had of the expected presence of the President that night. I said, 'He is?' He then said, 'We are going to fix up the box for his reception. I suppose there is going to be a big crowd here, and we are going to endeavor to arrange it so that he won't be disturbed.'"

Some excuse had to be made for these arrangements, and this was the excuse he gave:

"He then fixed this piece of wood into a small hole in the wall there as large as my thumb. I should think the hole to be an inch or an inch and a half long, and about three-quarters of an inch wide. He placed one end of this stick in the hole, and it being a little too large, took a knife and whittled it down a little. He also gouged out the hole a little for the purpose of making it fit. Then he placed it against the panel of the door across to the wall, forming an angle. He says, 'The crowd may be so immense as to push the door open, and we want to fasten it so that this cannot be the case.' He asked me if I thought that would hold it sufficiently tight. I told him I should judge that it would hold against a great pressure; that a hole would be punched through the panel of the door before it would give way. The wood was either oak or of North Carolina pine. I am not acquainted with that kind of wood, but I am rather of the impression it was North Carolina pine, which is a very tough wood, I believe. After he had fitted that to suit him we had a few words more together. I then heard some one come across the stage, back of the curtain."

The District Attorney. You have spoken of this interview with a person. I will ask the prisoner to stand up here. (The prisoner did so.) "State if that is the man (pointing to the prisoner), and

whether you saw him there." "I should judge that was the man." "Have you any doubt about it?" "No, sir." "I thought it was singular that the proprietor of the theater could not afford a look for a box of that kind. That was what passed in my mind. He was not there during the whole time; he went out before they came into the box."

Now, when this stick that I have sent for is brought in, you will see the piece which had been sawed off, and was tied to it, and that it had been made smaller at the end, as this man swears it was, which went into the hole. Now I want to call your attention in this connection to the testimony of Judge Olin, a member of this court. Judge Olin states what he saw:

"I perhaps might not improperly say that I saw a report that the President had been shot through a door, and I commenced taking preliminary examinations in reference to this matter. I went there personally, in company with Senator Harris and Miss Harris. Rathbone, who was with them at the time of the murder, was disabled by his wound from going there. I went there to examine the premises personally, to be able to understand as much testimony as was applicable to the particular transaction. When I got into the theater I examined this hole in the door. If you can see this panel (illustrating by a panel of the desk) I can represent it about as well as any other way by saying that it would correspond with a hole placed right here, right on the corner of the panel. You would scarcely notice it unless your attention was drawn to it. Placing your eye to the hole, it was about the height a person would occupy sitting in a chair inside. I saw that it was bored with a gimlet, and that a penknife had been used to take off the rough surface. The shavings and chips from that hole were still on the carpet, which had not been cleaned, and could be seen as you entered the box. I saw, too, that the entrance into this box from the body of the house was closed by a bar when shut at an angle, and some person had taken occasion to cut into the plastering of the wall a place into which the end fitted; and with the bar placed in it, and the other end against the door, any person pressing against it from the outside the stronger he would press the tighter the fastening would become. The plastering cut from that hole was also lying at that time on the carpet, as you went into the box of the theater. I delivered over the preliminary examination I had made to the War Department, and that ended my connection with the matter.

"The staple of the lock to the door went into a hasp, with screws at each end. The screw at one end had been loosened in such a way that if you shut the door and locked it—I tried the experiment once or twice—you could push it open; you could take one of your fingers and push the door open although locked. One of the

screws, the upper one, I think, had been screwed out in such a way that the door would open without any resistance, and without creating any disturbance, if locked.

"I saw nothing of that on the outside, and you would not see it on the inside without a careful inspection. It was just a little loosened, to that extent that the door could open when gently pressed against. The shavings from the wall and from the hole cut out of the door were all on the carpet."

Now, gentlemen, that little fact, examined into just after the assassination occurred, showed that this bar was fitted there just before the deed was done. Judge Olin found that the carpet had not been swept, and that the shavings were lying there. When he made the examination he saw them there, and, as he expressed it, could paint it as a picture. As he recalled it, it all lay clear before his mind. This is one of these little circumstances going to confirm just precisely what Rhodes saw going on the day of the murder, showing that it had just been done, and it must have been done very shortly before, because preparations had been made to receive the President, to make the box clean, to have it swept and garnished, ready to receive the head of the Government.

I come now to the testimony of Dr. Cleaver:

"Was in Washington on the day of assassination; was pretty busy; I was driving a black horse that day to exercise him."

He was a horse-doctor, you remember, and perhaps many of you know him.

"I started out about two o'clock in the afternoon. I went down to the Navy Yard first, and then down to the Congressional Burying Ground; went around by the Bladensburg toll-gate, and came in H street; got to the stable, I reckon, at four o'clock, or a little after four. I met John H. Surratt."

Now, he did or did not meet him. Let us see how this came out further presently:

"I have known him a good long while—I think I ought to know him. He was on horseback. I did not notice the horse much; I think it was a chestnut-sorrel; a rather darkish horse."

These horsemen know the colors quicker and better than I do, and perhaps better than you do.

"I spoke to him and said, 'How are you, John?' He nodded to me; I do not know whether he spoke or not; I was jogging along at a pretty good gait."

Now, gentlemen, this witness knew the prisoner and had known him for years. As I read to you the other day, the prisoner kept his horses at Cleaver's stable, and so did Booth. He did not make any mistake about it. He either committed gross, willful, wanton perjury, without hope of reward, or he told the truth. He was not mistaken; that excuse cannot be given for him. Let us see how it happened that the Government got hold of this evidence. It was not from any favor of Cleaver. He did not want the Government to get hold of it. I read from his cross-examination:

"Did you tell them you saw John H. Surratt in this city on the afternoon of the 14th, the day of the murder?" "No, sir; I did not."

"Did you not know it was of importance to find out whether John H. Surratt was concerned in the murder or not?" "Yes." "Then why did you not tell them what you knew?" "I was well acquainted with Surratt, and inclined to shield him."

This is on cross-examination, and he tells you, "I was well acquainted with Surratt, and inclined to shield him." And that was the truth about it. Cleaver, as I said before, was an Englishman; he was in sympathy with the rebel government; he was our enemy, and he was inclined to shield Surratt; and that is the reason.

"I want to know the first person to whom you told that you saw John H. Surratt on the 14th of April?" "I may have told a great many—I cannot recollect." "Do you know whether you told it to anybody before you told it to Sanford Conover?" "No, sir."

As you know, he was under arrest and in prison for a crime with which he was charged in connection with the other sex. You know all about it, I suppose, and I do not need to go into it.

"I do not speak of the time you met him. During the conspiracy trials you knew it was an important fact to ascertain whether he was in the city on that day or not?" "Yes, sir; and I should not have told it now if it had not been for Conover."

Who was in prison with him, as you remember.

"He soon told somebody, and the first thing I knew somebody came to the jail to see me. I got very mad at Conover. I did not want to answer the question; it was Mr. Ashley—a stoutish gentleman?"

Mr. Ashley was a member of Congress and of the Judiciary Committee, who was investigating these things, as you all know. It is a part of the public history of the country.

"I asked him, and he told me how he came to know of it. I would not answer the question until he told me who had told him of it. I knew I had not said it to anybody but Conover. When I went back I never spoke to him for six or seven days; had a talk with Mr. Ashley; did not tell him a great many things; I never told him of the sale of Booth's horse to Arnold. Booth came down to the stable on the 27th or 28th of January and paid his livery, I think, to the 26th. Then he came about the 27th or 28th and paid his livery up to February 1st, and Sam Arnold in company with him. He then told me, in Arnold's presence, that he had sold the horse to Arnold, and that Arnold was to pay the livery from that time on. Have not received any offer of favor or reward for the testimony given in this case."

Now, gentlemen, every man who has ever had experience in human testimony knows that testimony coming out in the mode in which that testimony came out is some of the very strongest testimony that can exist. It came from a man having no sympathy with this Government; it came from a man who was a friend of this prisoner; it came from a man who admits himself he wanted to shield him. He told his fellow-prisoner in jail, where they were lying day after day together, and where men will talk, that he had seen, met, and spoke with Surratt on H street on the very day of the murder. He told him in the strictest confidence. Conover told a member of the Judiciary Committee of it, and he went to see Cleaver in jail, and in that way it was forced out of him; and it is true.

I now come to the testimony of Reed, and I have here to remark that this same Mr. Reed was a tailor in this city, and testified before the military commission, and his testimony is printed here in this book. The other side called his attention

to his former testimony—I think I am not wrong; if I am they will correct me—and his former testimony confirms his testimony now in every particular; and he says, “I knew him, and am as sure that I saw him as that I stand here.”

I think I am not mistaken about it, but I may be. I know they called the attention of some of the witnesses to their testimony before the commission. They did so with Dye, and I think they did so with Reed; but it is very easy to ascertain. Now let us see what Reed says:

“Have lived about thirty years here; know the prisoner at the bar by sight since quite a boy; was in Washington on the day of the murder of the President; saw prisoner on that day in Washington on Pennsylvania avenue, just below the National Hotel. I was standing, as he passed, just in front of where Mr. Steer keeps the sewing-machine store. It was about half-past two, as near as I can recollect. There was a recognition; whether it was by him or me first, I am unable to say.”

You notice that the witnesses whose testimony I am now reading, are witnesses living in the city of Washington, all of whom knew the prisoner personally, and had known him for years. They could not be mistaken in his identity in broad daylight.

“What attracted me more particularly was his dress rather than his face. I remarked his clothing very particularly. The appearance of the suit he wore—very genteel; something like country manufactured goods, but got up in a very elegant style, the coat, vest, and pantaloons; his appearance so remarkably genteel. I was rather struck; he was on foot. As he passed from me I turned and looked at his feet. He had on a new pair of brass spurs. They were plain, common brass spurs; nothing very particular about them except the rowel. The rowel was very large and very blue; they evidently were bran new.”

You have heard testimony heretofore about the eight pair of “bran new spurs” that were up on the bed in John Surratt’s room.

I should not suppose that from March to April brass spurs with large blue rowels would be destroyed. I am not a hardware man, but I venture the prediction they would not be.

I next come to the testimony of Vanderpoel, a lawyer from the city of New York, who was in the army; who came on here, first informing the District Attorney of what he knew. The District Attorney telegraphed him to come on, and he came voluntarily, as he says, without any summons, to testify in this case. What object could he have, what reason could he have, except the motive that impelled him to do justice? Now, let us see what he says, and what his opportunities of knowledge were:

"Before I went to the war I knew J. Wilkes Booth. He used to visit a club that I belonged to in the city of New York, next to Laura Keane's Theater. The Lone Star Club."

You have heard something about that "Lone Star Club," I presume, of which Booth was a member, and of which this witness was a member. It was there that he became acquainted with Booth, and there he knew him.

"The day of the assassination I was in the city of Washington; saw John Wilkes Booth on the 14th of April; spoke with him."

He knew Booth well, belonged to the same club with him, saw him, and spoke with him.

"He called me Major, that is the title he generally addressed me by; on that day saw him at least three times, first just above Willard's, on the sidewalk. The next place I saw him was between Eleventh and Twelfth, or between Tenth and Eleventh, on the left-hand side of Pennsylvania avenue, going from here to the White House. I did not see him at this place I speak of on the avenue. Saw the prisoner with Wilkes Booth, and two or three others in the party. They were sitting around a round table, with glasses on it. I had been up to the Paymaster's Department on some business relating to my accounts."

I call your attention to these marked facts which this witness states: of his settling his accounts at the paymaster's office on that day—"Relating" to his accounts. He states that he was at the paymaster's office on that day, engaged in this business connected with the office which he held in the army, where he must have seen many persons. If his testimony were not true, it would have been the easiest thing in

the world to prove that these things were false. He testified to a score of things on which he could have been contradicted if they were not true. He has not been contradicted in one single point, as I will prove to you.

"In coming out, I came down the avenue on the opposite side from the place I have described, and hearing music, I went across to see what was going on at this place. As I went up stairs I think there was a woman dancing a sort of ballet dance. There was a stage or something of the kind in the back part of the room."

Now, gentlemen, will you note that this witness never pretended to state that there was any exhibition there, or any concert? It was but one single woman who came out on the stage and danced.

"Should say there were fifty or sixty people there; the table where Booth and Surratt sat was a round table, probably four or five feet across. They were apparently talking. It was in the afternoon; saw them plainly. I was about as far from them as I am from you at the present time. Twelve or fifteen feet."

How will you get along with this testimony? Was there any motive to induce this man to lie? Could he be mistaken, knowing Booth well, as he did, and seeing him there on this occasion, with this man? A bright, intelligent, active man, as he is, could not be mistaken, and he is positive, entirely so.

I have something to say about the attempt that has been made to discredit Vanderpoel. The attempt was made by doing what? By proving that he was not at the places where he said he was? By proving that the things at the Paymaster General's office which he named did not occur? By showing that he was somewhere else than in this city? Not a bit of it. But witnesses were called to show that in the Metropolitan Hall, on D street, there was no dancing going on, and no exhibition that afternoon. He never testified that there was any exhibition anywhere, except the exhibition of a single woman coming on the stage and dancing. He did not testify to anything on D street either, or pretend to say that it was on D street; but he said it was somewhere along from Tenth to Twelfth street, on the left-hand side of the avenue. They

next called witnesses about a place on the north side of Pennsylvania avenue to show that there were no such exhibitions going on there. I suppose there were not; very likely there were not. Quite a number of witnesses were called on the stand in regard to those two places, neither of which did Vanderpoel say or pretend was the place. He did not undertake to state what the name of the place was; he did not know the name. They asked him if it was Metropolitan Hall or Washington Hall. He said it was something of the sort; he did not know the name. Now, let us see a little further what he says about that. It was not for us to prove that there was such a place. He had stated where he went, and they undertook to show there was not such a place as that, and went into D street to show that it was not on D street. We did not suppose it was. They went on the north side of the avenue to show that it was not there. We had never said it was. But they were mighty careful to keep as clear as possible of Teutonia Hall, which was on the side of the street where he thought it was. They never called a witness from first to last to prove anything about Teutonia Hall; but you will notice that on the cross-examination of one of their witnesses in relation to another hall on the north side I brought out these striking facts, which you will find on page 664.

On this point, as you will find of the testimony, Vanderpoel testified as follows:

"Think it was between Tenth and Eleventh, or Eleventh and Twelfth streets. I have not been there since to see. It was Metropolitan Hall, Washington Hall, or something of that sort; could not swear positively to the name."

That was the original testimony of this witness. It was "along there." He knew it was that side of the avenue; the name he could not tell. I have read it *verbatim*.

"Won't you tell us where Teutonia Hall is?"

This is the cross-examination of one of their witnesses. They knew where Teutonia Hall was.

"It is on the south side of Pennsylvania avenue, between Ninth and Tenth streets."

That is where this occurred, and where Vanderpoel went.

"Was in Teutonia Hall some time along about the middle of April. They had some round and some corner tables."

The counsel made a great parade of the fact that in the Metropolitan Hall, on D street, the tables were square. But when we get his witness to Teutonia Hall the tables are round enough.

"They had a rehearsal there on the 14th of April; do not know when. Their rehearsal was before the exhibition; generally in the morning."

This all came out from their own witness, and with it out they have never called a witness from Teutonia Hall, never called a witness to show that this dancing, Booth and Surratt being there, did not occur just as this witness told you, and at the very place where he said it occurred. They have been mighty shy about putting any witness on the stand in reference to Teutonia Hall; they bring them about some other halls we never spoke of, but they keep very clear of this hall.

I turn now to the testimony of Lee:

"Knew John H. Surratt by seeing him. I recognize that young man; but he did not have that 'goatee' on when I saw him."

You will notice that not one of the witnesses who saw him on that day saw him with a goatee; everyone had it off; all with a moustache who speak on that subject at all. The barber was the first man who saw him; and the barber says he gave him a "clean shave," with the exception of the moustache. You will not find, gentlemen, in this evidence, any two things that do not come in harmony. The reason is that they are true, and all truth is in harmony.

"On the 14th of April—I was at that time with Major O'Beirne, the Provost Marshal of the District of Columbia—I went to the Washington depot with reference to men who were deserting. I was not looking for deserters myself, but was chief of the men employed for that purpose under Colonel O'Beirne. I went down to the depot, and on my way back, at the corner of Sixth street, I stopped

a minute to answer a question; the man who asked it I do not know, but he inquired about some young fellow who was in my regiment. When I left him I continued on up the avenue, the right-hand side going up towards Thirteenth street. When near Mr. Stinemetz's hat store, I passed a man whom I took to be John H. Surratt. He was coming this way, and I was going in an opposite direction. It was between Franklin's spectacle store and Stinemetz's hat store. To the best of my knowledge that is the man. (Pointing to the prisoner.) Should suppose I had seen him a dozen times before that. He was going in an ordinary gait; was going fast myself, walking quickly."

I now turn you to the testimony of Grillo:

"Did you know David Herold, one of those tried for conspiracy?" "Yes." "Did you know George Atzerodt?" "By sight." "Where did you see Herold last, before the assassination?"

And then he goes on to tell about seeing him at the Kirkwood House.

"As I was coming down Tenth street I met Herold, and he asked me if I had seen John Wilkes Booth. I told him I had; that I had seen him in the morning about eleven o'clock; that he had some letters which he had received. His letters used to come addressed to the theater. I told him that I saw him a little after four, on horseback; that he stopped in my place and got a drink. He rode a small horse—gray, I believe, as far as my recollection serves me. Herold after this said to me, 'Do you know that General Lee is in town?' I told him no, I did not; that I hadn't heard of it. He says, 'Yes; he is stopping at Willard's.'"

I suppose they expected he would be stopping there if they could succeed in throwing this Government into confusion.

"This was the day of the assassination. In the afternoon. Says he, 'Yes, he is stopping at Willard's; let's take a walk up there and find out something about it.' We started up, and as we got to the Kirkwood House we met Atzerodt sitting on the steps. He stopped to talk to him, and I walked ahead as far as the corner to wait for him. He stopped with him two or three minutes, and then came back and walked with me up to Willard's. After we got inside of Willard's Herold met two young men. They talked together a while; I do not know what they said. As they were in the act of parting Herold says, 'You are going tonight, ain't you?' One of the young men answered and said, 'Yes,' in a low tone. They were apart to themselves. We left him and went out toward Grover's Theater. I noticed Herold walking a little lame, and says to him, 'What's the

matter; you are walking lame.' He replied, 'Nothing, my boot hurts me.' When we got behind the park there he pulled up his pants to fix his boot. I then noticed that he had run down in his boot leg a big dagger, the handle of which was four or five inches above the leg of the boot. I said to him, 'What do you want to carry that for?' He answered, 'I am going into the country to-night on horseback, and it will be handy there.' I laughed at him, and said, 'You ain't going to kill anybody with that?' I left him at the door of Geary's billiard saloon. I went up stairs, and he walked ahead."

"Look about in this room, and see if you see anybody that looks like the man who said 'Yes' when Herold asked him if he was going tonight?" "Well, the gentleman, I believe, is that man (pointing to the prisoner), but I don't know. As far as my knowledge goes, he looks very much like him. He had no beard, however. He had a little moustache."

You will find that they all tell you that same thing; he had not any beard anywhere except on the upper lip, after Wood had taken care of him in the morning.

He goes on to say where he was that night:

"Recollect Booth coming in there; was behind the bar at the time; he came alone."

In which he confirms Sergeant Dye, as you will see when we come to his testimony, who tells you Booth went into this drinking place alone, just as this witness says he did:

"How long was that before you heard of the assassination?" "It must have been between eight or ten minutes or fifteen minutes; I cannot remember exactly."

"Will you describe what light there was in front of the theater, and where it was placed that night?"

"We had two lights out in the street; then there were two lamps in front of the theater. The light is very brilliant there."

I now come to Coleman:

"We were on Pennsylvania avenue, between Tenth and Eleventh streets, going toward Willard's. We looked around, and at first we noticed a very nice little horse, and a person was standing a few feet from him in the gutter. We stopped at first to look at the horse; then we noticed the rider, and I said to Mr. Cushing, 'There is Booth, is he not?' I looked then again and saw that it was. We remarked the pallor of his countenance. There was a little conversation. He was sitting on his horse, with his face toward us and was leaning over, talking very earnestly with a man who stood on the

curbstone. This was about six o'clock in the evening. I recollect taking out my watch to look at it. He was bending very low; he was sitting with their two heads very nearly together. He appeared to be talking very earnestly; his face was very pale—as pale as if he had got up from a sick bed. He was dressed in a suit of gray clothes, with a low-crowned hat—a black felt hat—on. Have you seen anybody today that bears any resemblance to him? I would like the prisoner to stand up and turn sideways. (Prisoner stood up and turned round.) He certainly looks like that man."

The next testimony to which I shall direct your attention is that of Peter Taltaval:

"Know John Wilkes Booth. He used to come in my restaurant very often. He came in that night. He walked up to the bar and called for some whisky; he was alone; he drank it and called for some water."

Again:

"I saw him two or three days before with Herold in the same place; he came in there. I could not exactly say they just came in—came to the bar and got a drink; probably had a little conversation together, and went out again. I could not particularly describe what passed there at all, not taking any particular notice. On the night of the murder did not see Herold come in. In the afternoon of the same day Herold came in there, and asked if I had seen John. I asked him what John. He said John Wilkes Booth. I told him I had not seen him."

Confirming what I am presently going to show you in another connection. I next come to the testimony of Susan Ann Jackson. Any one experienced in human testimony, and who has ever had much experience in courts of law, knows well that the witnesses most to be relied upon, and most truthful and most natural in their story, are frequently those of simple intellect, young children, girls, women, or simple men, who, when they try to tell the truth and only the truth, never have any difficulty at all, because it is always easy to tell. I will defy the most skillful counsel that ever opened his lips in a court to disturb the simplest child, the simplest woman, or the humblest man by any cross-examination if that person is simply telling only the truth. You cannot disturb it; there is no power of doing it. It is only where falsehood comes in

IX. AMERICAN STATE TRIALS.

that trouble comes; not where truth is, for it is simple and easy—always consistent. Any one can tell it; simple people do tell it; and when they tell it they always adhere to it, and no skill of counsel can disturb it. That is the experience of every judge and every lawyer.

“Remember the Good Friday in April; Mrs. Surratt went down in the country on Good Friday, between eleven and twelve o'clock in a buggy with Mr. Weichmann. Mrs. Surratt returned between eight and nine o'clock.”

You will remember she was anxious to get home at nine o'clock, as Weichmann tells us she did, as he thinks, a few minutes before that.

“After that, on that evening, saw the prisoner here in the dining-room. His mother was with him. She told me that was her son. She did not say anything else. When I was gathering up some clothes to put in the wash I asked if they were for Mr. Weichmann, and she said no, they were for her son.”

This is one of those little truths that fall out in this natural way. You do not think she made this up, do you? You do not think the counsel told her to tell this, do you? That was not a thing that would ever have entered the head of a counsel or anybody. How happened she to tell you about these clothes? How happened it to drop out in this conversation? It dropped just as truth always drops, naturally and easily. It is connected with another fact that I called your attention to yesterday of great moment. You remember that Holahan tells you that the next week he himself went back to the house, and that on his bed were some clothes that had been washed and were then clean; that among them were some of Surratt's clothes; that he took some of them, put them in his pocket, and went away with them. No doubt that was so. They were the very clothes this colored woman took up on that Friday night, and which Mrs. Surratt said were her son's clothes, and they were.

“She asked me did he not look like his sister Anna. I said I did not know; I did not take good notice of him to see who he favored.”

Do you think that colored woman made up this story?

"Who was it that asked you if he did not look like his sister Anna?" "Mrs. Surratt." "Did you bring anything into the room you have spoken of where she was sitting with her son?" "I had just brought a pot of tea into the room." "Who was in the room when you brought in the pot of tea?" "Not any one, except her son." "Do you see any one now who she told you then was her son?" "Yes, sir; I am looking at him now." "State whether that is the one." (The prisoner made to stand up.) "That is the man, sir." "After you took in the pot of tea, what did you do?" "Just went out again." "Did you return again?" "No, sir; I did not return in the room any more." "Will you tell us, as near as you can, about what time in the evening you took in the pot of tea?" "As near as I can come at it, she came home between eight and nine o'clock. Well, when she came home and came to the dining room I carried in supper for Mr. Weichmann, the man who boarded there. After he went out she called me and asked me for a second plate, cup and saucer. I carried them to her." "And then you found this man there?" "Yes, sir." "Did you know his sister Anna?" "Yes, sir; she lived there." "She was in the house?" "Yes, sir."

You saw that colored woman, you looked at her face, you heard her simple story. Through the ingenuity of counsel an attempt was made to show that this related back to some other time—to the 3d of April. I read you the evidence yesterday in order that you might see how utterly impossible it was that that could be. That was on Monday, it was not on Friday. The sun had rolled its course, and, as I once told you, stamped that day as it went down in the ink of night, Monday, not Friday. That is not all. The proof is clear that he only came in there on the night of the 3d of April, and went out before seven o'clock, that he went down to the Metropolitan Hotel, took his supper there with his friend, and never returned until this night. There is no possibility of confounding and confusing these two things. The proofs all stamp that as a got-up story. I now read from the cross-examination of this witness:

"Were you ever examined as a witness about this matter before?" "Yes, sir; Mr. Orrut examined me—or Captain Orfut. I am not sure about the name."

She did not know the name. I believe there is no such name as that. There was a name having some resemblance in sound, and at the time I supposed it quite likely he might have been the person who had made this examination. But when we got Colonel Smith upon the stand, he told you it was he who made the examination. I tried, with all the ingenuity I could bring, to get out, if I could in some way, the fact of whether he did make an examination which was reduced to writing, and that I got out; but I was not permitted to prove, for Mr. Bradley, the associate counsel of Mr. Merrick, objected to my giving in evidence what she said that night to this Colonel Smith. I could not get it in, and it is not in. But she said something, and something that they did not want in and I did, and yet my learned friend made quite a speech the other day because this testimony which they succeeded in getting ruled out was not brought into evidence. Smith examined her there and made a written report, which I wanted to put before this jury, and which the counsel succeeded in preventing me from doing, because they wanted to get rid of the effect of it. They knew it; they knew the power of such evidence. They objected to it.

Now, let me read to you the cross-examination of this witness, and we will see how what I have said about the impossibility of disturbing a truthful witness, however simple, is carried out in this case. This is the cross-examination of the skilled counsel on the other side:

"Where were you examined?" "He carried me down to his office—I forget where it was—in the night. Monday night, after the assassination happened; think it was somewhere near the Treasury; I went in a hack." "Did they write doyn your examination?" "Yes, sir. Since then I have been down to what they call the War Department; in the course of last week, I think it was. It was just last week I was carried down to the War Department. Mr. Kelly carried me." "And you were examined there?" "Yes, sir; it was written down." "When you were examined before General Augur, if that was the place, did you then make the same statement you do now?" "Yes, sir." "You stated that Mrs. Surratt's son was there that night?" "Yes, sir." "What became of him?" "I do not know, indeed; I did not see any more of him." "You saw him about nine or half-past nine?" "It was between eight and nine when she came

—after Mr. Weichmann and she took tea she called me to bring a pot of tea to this gentleman." "Where was this gentleman then?" "I do not know." "You had seen him before that?" "No, sir; I had never seen him until that night." "And when you went into the parlor you found him sitting in the dining room, and Mrs. Surratt told you it was her son?" "Yes, sir." "And this is the very same gentleman?" "Yes, sir; that is the very same gentleman who was in there with Mrs. Surratt." "And that you told to these gentlemen and they wrote it down the Monday afterward?" "Yes, sir."

They brought that out themselves.

"And you never saw him before then or since?" "No, sir; never before or since, until one day last week, when he was brought up here." "And you are sure he is the very same man?" "He is the very same man she told me was her son." "And the very same man you saw at her house?" "The very same man I saw the night after she came in from the country." "The night of the assassination?"

"Are you quite sure the gentleman you saw there, who she told you was her son, was not there on Monday, ten days before the assassination of the President?" "Never saw the gentleman she called her son until Friday night." "You are sure it was Friday night?" "Yes, sir; it was the Friday night she came from the country."

These simple, striking facts fix themselves on such simple minds, and she could not be disturbed in her statement of them.

I repeat, gentlemen, no counsel could disturb that witness. Now, there are persons living in this city who know whether this is true or not—who were in the house that night, and who have not been put upon the stand.

I next come to the statement of Mr. Heaton. Mr. Heaton was a clerk in the General Land Office. He was in front of the theater before the assassination on that night:

"Remember when the President's carriage came to the theater that night; saw the President and his wife and the party get out of it. I saw one face at the time that attracted my attention particularly. At the time the President's carriage drove up, I saw half a dozen or a dozen persons come round it from the restaurants in the vicinity. These were merely persons who came from curiosity to see the President. On last Tuesday week I came into court and saw the prisoner for the first time. On looking at him, I saw a very distinct resemblance between the face I saw that night and his own. Saw the prisoner in front of Ford's Theater, on the night of the

14th of April, 1865, between a quarter of eight and a quarter past eight."

You saw Mr. Heaton; you remember his face, I think; you remember how he told you he happened to come into this room, and looking upon the prisoner brought back the face he saw that night in front of the theater. He was an honest man; he had an honest face; he is a clerk in the General Land Office. His name is Frank M. Heaton, and it is very easy to learn all about him. It would have been very easy to impeach him if he was not telling the truth. He lived right opposite the theater. Has anybody breathed a word against him?

I next come to the testimony of Sergeant Dye. Sergeant Dye was one of the early witnesses put upon the stand. We were told in the opening speech for the defense that Sergeant Dye was going to be impeached. He had told them where he lived, where he was born, and what his business was. Did you ever hear anybody come here to impeach Sergeant Dye? He testified here at least seven weeks ago. Has anybody been found to say a word against that soldier? Has any record been brought against him of any kind? You heard in a motion made and in a statement made here that they were going to do something to Sergeant Dye; that they were going to make out that he had passed counterfeit money. Did they do any such thing as that? Did we try to prevent them from doing it? Was not that the inference they tried to leave upon you, that he had passed counterfeit money, knowing it to be counterfeit, and that he had committed some crime? I do not believe that they failed to make an investigation on that subject; I do not know. But diligent as they have been, strenuous as have been their exertions to find everything they possibly could against our witnesses, they would have brought some man to have spoken against his character if they could, and they would have brought some testimony or some record to show that he had passed counterfeit money, knowing it to be counterfeit, if they could find any such thing. I do not know what the counsel know. I have not the capacity to see into their hearts; but when I learned from them that there

was such a charge, I determined to find out what it meant, and if the learned counsel will tell me that he does not know of that record (placing a written document before Mr. *Merrick*), then I have nothing to say. If he does know it, he did the most cruel thing a man ever did. I have the record here, and the affidavit of the very man who made the charge, showing that every exertion had been made beforehand in relation to the bill, and it turned out to have been, so far as this man was concerned, a mistake, and the very man making the prosecution signed the affidavit there attached, and the district attorney dismissed it at once, and with his own hand sent me this record under seal. If these gentlemen did not know that, they did not know it. Surely they did not know it, or they would not have done what they did.

It strikes me that they would have impeached him if they could. Could not they have brought some witness against him, or some record against him? This young man, in humble life, went into the army as a volunteer and as a private. He fought his way like a brave man, and did his duty, and rose from his humble position in Washington county, Pennsylvania, until he became a sergeant in the regular army of the United States, where he holds that honorable position now, having perilled his life in the defense of his country as a private soldier; having faced the cannon's mouth, with not a blot upon his name, and not a human lip to utter aught against him. Now, let us see what he says. He states that he was in front of Ford's Theater that night, sitting upon a plank. His regiment lay out at Camp Barry:

"As I sat there upon this plank, Sergeant Cooper was moving up and down the pavement. Parties came down—I presume it was about ten or fifteen minutes after we got there—and went into the saloon below and the saloon adjoining the theater to drink, quite a number of them.

"The first who appeared on the scene was John Wilkes Booth himself. What first attracted my attention was his conversing with a short, villainous looking person at the end of the passage. It was but a moment before another person joined them. This person was neat in appearance—neatly dressed—and entered in conversation. This rush came down from the theater, and as they were

coming Booth said to this other person that he would come out now, as I supposed, referring to the President. They were then standing facing the place where the President would have to pass in order to reach his carriage and watching eagerly for his appearance. He did not come. They then hurriedly had a conversation together; then one of them went out and examined the carriage, and Booth stepped into a restaurant. At this time all the party who had come down from the theater had gone up. Booth remained there long enough to take a drink. I could not say whether he did or not. He came around and stood in the end of the passage from the street to the stage, where the actors passed in. He appeared in a moment again. This third party, neatly dressed, immediately stepped up in front of the theater and called the time. He stepped up and looked at the clock, and called the time to the other two. The clock was in the vestibule of the theater. As soon as he called the time to the other two, he went up the street toward H street. He did not remain there long, but came down again, stopped in front of the theater, looked at the clock, and called the time again, looking directly at these two, and seemed excited. He then immediately turned his heel and went toward H street. It was then I thought something was wrong by the manner in which these three had been conducting themselves, and as a soldier I had a revolver in my pocket, with my handkerchief wrapped around it. We wore artillery jackets, and the revolver was in my breast pocket. My suspicions were so aroused that I unwound my handkerchief from around my revolver. It was not long before he appeared again, going on a fast walk from the direction of H street. He placed himself in front of the theater, where the light shone clear on his face."

I have read to you before how brilliant the light from the lamps there was.

"There was a picture on that countenance of great excitement, exceedingly nervous and very pale. He told them for the third time that it was ten minutes past ten o'clock. That is the last time he called it. It was ten minutes past ten o'clock."

"There was a picture on that countenance of great excitement, exceedingly nervous and very pale." Well, it was not very strange, for they had just reached the hour when they were to perform this horrid deed.

"Saw that man very distinctly, very distinctly. He sits there. (Pointing to the prisoner.) I have seen his face often since while I have been sleeping—it was so exceedingly pale. He hurried up toward H street again, and that is the last I have seen of him until lately. Booth then walked directly into the theater. Called the attention of Sergeant Robert H. Cooper. Booth then entered the front of the theater. Sergeant Cooper and myself went to an oyster saloon;

soon after we got to the oyster saloon we heard of the murder; we had not time to eat our oysters. We did not go to the theater. We hurried right up H street to the camp; thought a detail would have to be made, and as I was first sergeant I would have to be there. On the way a lady hoisted the window of her parlor, and asked us what was wrong down town."

How happened this lady at that time, before there had been the least alarm, and when they were the first men who passed by, as you will see hereafter, to ask what was going wrong down town? When Webster murdered Dr. Parkman and they told him they had found the body, said he, "Did they find it all?" "What was going wrong down town?"

But let us go on with Sergeant Dye's testimony:

"I told her that President Lincoln was shot. She asked me who did it. I told her Booth. She asked me how I knew it. I told her a man saw him who knew him. It was light enough for us to see some distance on the street. I believe the woman who opened the window appeared to be an elderly lady. She resembled the lady on the trial of the conspirators—Mrs. Surratt. Have seen the house since. Recollect the steps distinctly as they appeared that night. In order to answer her question I had to go up in the direction of the steps, which are very tall. At the time she opened the window nobody was ahead in the street. We met two policemen a short distance beyond that, who had not even heard of the assassination; no pedestrians had passed that way."

They were the first, as appears afterward in the testimony of Cooper, to give the information to these policemen.

I now come to the testimony of Sergeant Cooper, who was with Dye at this time. You will remember that Sergeant Dye was sitting upon that plank, and Sergeant Cooper was walking up and down the pavement. Sergeant Cooper says:

"Was walking up and down the street; walked up to the corner of F street once, crossed over to the other side of Tenth street, and walked down the other side. Sergeant Dye was sitting there, and he and I had conversations at different times. The President's carriage stood by the platform. The driver sat on the carriage, and while we remained there a gentleman approached the carriage to the rear, and looked in at the rear of the carriage."

The same as Dye had already told you before.

"He was a young man, very genteelly dressed; that was all I noticed about him. I presume he was about five feet eight or ten

inches. I observed a rough looking man standing near the wall of the theater. I would say he was not as tall as the other gentleman who looked into the rear of the carriage; saw a gentleman go into the drinking saloon below the theater; did not know the gentleman. Sergeant Dye and I started round a corner and went to a saloon to get some oysters. As we were going down H street there was a lady raised a window, put her head out, and asked us what was going on down town, or something to that effect."

This witness was walking up and down, and did not see all that Dye saw, but he confirms Dye in relation to his sitting there, the examination of the carriage, the calling of the time, and what occurred in the passing of this house on H street.

Now, I have one word to remark in this connection: wherever you find witnesses, who are not situated exactly alike, in reference to seeing or hearing the thing that transpires, coming upon the stand, and each telling precisely the same story the other tells—that he saw precisely the same things and heard the same words, and there is anything complicate about it—you may be entirely sure that that story is made up. No two men see alike, no two men hear alike; no two men hear and remember the same words alike. They may see one specific thing or hear one simple sentence, but when you place two men, one sitting and the other walking about, where their vision is directed in a different way and where their attention is differently directed, and you find the two telling a complicated story exactly alike, the story is made up. The truth of it is apparent from the fact that one tells what he heard and saw, and the other tells what he heard and saw. They do not both see precisely the same thing or hear precisely the same words. It is just like when you find a signature that will exactly fit your own, cover it in distance, size, and space, it is a forgery, not real. There are always little differences as there are here, not a substantial one.

Now, gentlemen, we have reached this point. Before the theater by three men is Booth seen; before the theater by three men is Surratt seen, two of them recognizing him positively, the other giving a description of him. Heaton is not

so positive. Dye, who was situated where he could not be mistaken, is entirely positive. Cooper saw him and described him as he went up to the carriage; and then he and Dye go up H street, and at the same house the same thing occurred. Booth goes into the drinking-place and takes his drink, and, when the last time is called, stealthily goes into the theater, passes into the box of the President, lifts his infamous hand, and kills that man, who is there trying to relieve himself from the burdens and toils which were pressing him by some little diversion with his wife and child. It was the time, as you remember, that Lee's army had surrendered; it was the very day that he had been with General Grant; and if General Grant is in the room he will remember it, for he told me of it himself; it was on the very day when he was with his Cabinet and with General Grant, devising what means of leniency, what easy modes could be brought about to restore peace to this bleeding country. All remarked how gentle, how kind, how lenient was his policy on that fatal day. It is well remembered by the general-in-chief, and well remembered by all his assembled Cabinet who were there with him. He indulged in no pleasures, he had no amusements; but occasionally, relieving himself from these toils, went to the theater, that he might be diverted. His other sole diversions, as is well known, were to go to the hospitals, to the sick soldiers, to cheer them, to soothe them in their sorrow, and be by the side of their dying beds, as he frequently was. And here this occasion was selected, that by the side of his wife and by the side of his friends he should by the assassin's hand be stricken down in death. The counsel here ask, Have we not had blood enough? Is it not all right. They call upon a jury of twelve men in the city of Washington to say it is all right; there is no guilt about it, neither as to those who were engaged in the plot nor those who perpetrated it. It is right, if they are not guilty. But when they call upon you to say a man is not guilty, who was one of the plotters, they call upon you to say it is all right. They would not be willing to put it in that form, but that is the real form, and the form in which no one

can escape its being put. The form is, gentlemen, do you say the plotters in that great crime are innocent? If they are innocent, then they are right. What do you say about it? Will you tell this community—your wives, your neighbors, your clergymen, your own souls—that it is right? It is right if there is no guilt.

The whistle of the signal sounds when Booth goes in, and then the time is called, the man hastens up H street, Payne mounts his horse at this given signal, and goes to the house of Secretary Seward, and goes through that murderous, that awful scene which ensues. In the presence of his daughter, by the side of his wife, the sick and almost dying man is mangled and cut to pieces in this brutal way; those trying to protect him are stricken down; his own son's life almost destroyed, almost by a miracle saved; his daughter from the shock goes to her grave, and his wife in a few weeks from that hour dies.

“Have not we had blood enough?” Have not we had murder and assassination enough? Is it not time that a jury of twelve men shall say there has been enough and we will stop it? No jury has said a word upon this subject yet. No twelve men have had the chance to pass upon it. The civilized world have passed their verdict upon it, and it is a verdict of condemnation. Thirteen thousand rebel prisoners at Point Look-out passed their verdict, and they wrote the severest curse and condemnation upon it that words can express. The entire governments of the civilized world expressed their condemnation of it; they said there had been blood enough. The Turk, the Infidel, the Chinese, the Japanese, the Greek, the Arab, the Protestant, the Catholic—from sea to sea, from pole to pole—over this whole wide world did they send their letters of condolence and their resolutions of condemnation of this terrible crime. Yet the counsel tells you this is not different from the commonest murder of the lowest vagabond in the streets. That is not the verdict of Christendom—that is not the verdict of the brave men who were rebels; it is not the verdict of those thirteen thousand rebel prisoners; it is

not the verdict of humanity; it is not the verdict of a man.

Now, what happened? This deed is done; Herold and Booth flee. Flee where? Flee forthwith to the house of the mother of this prisoner to get the arms, to get the field-glass, to get the ammunition, to get the whisky which on that day she had ordered to be prepared; the arms which her own son a few weeks before had secreted, which he in connection with Herold had brought from T B there, had hid them, had told his mother; and Booth and Herold called upon Lloyd, "for God's sake to get up and give them those things." With them they escaped, with them they were taken, and the things are brought here as living witnesses to testify with their dumb mouths against this awful crime.

Now, gentlemen, who did the deed? You notice, from the testimony here given, that the first idea of all was that John Surratt was the one who had assassinated Mr. Seward. It turned out it was another man who had assassinated Mr. Seward, the very man that it had been arranged before should kill Lincoln. It was this bloody Payne. It was he who did the deed, and what became of him? He wandered about in these streets, and knew not where to go or how to flee. His horse was found, but he was not found. Distracted almost, as it were, and like a wandering, demented spirit he returned to the very house where the plot had been formed, and there enters on that Monday night, and says he has come there at Mrs. Surratt's call to do her bidding in a menial labor. He had done her bidding in other things, or he had done that which he had plotted in other things, and he returned to that same house, and there he was arrested; and there when she rose from her knees and came out of the parlor, she lifted her hands and said before God she never knew that man. And when she passed out by Colonel Morgan, she leaned over, and, in a confidential whisper, said to him, "I am so glad you officers of the Government have come here to protect us, for that man with the pickaxe came here to kill us."

Well, we have had blood enough. No jury yet has ever passed on one of these crimes; you are going to do it now. The world looks on, your own friends look on, your God looks on. It is for you to try; it is not for me.

I come now to the flight. I turn to the testimony of Charles Ramsdell, from Boston, Massachusetts, belonging to company D, third Massachusetts artillery. He was on his way, with Staples, another soldier, to Fort Bunker Hill. While on the Bladensburg road, a short distance from this city, in the early dawn, on the morning of the 15th, after this murder, he met a man on horseback. Let me read you what he says:

"We went on foot with Staples. He was a private in my company. We left Washington between four and five. I saw a horse hitched to an opening in the fence about two miles from here."

You remember the description of the horse which Atzerodt rode. Atzerodt was afterwards found here on foot, and was not taken with his horse. You will find this horse answers the description of the horse which Atzerodt rode, and which he probably took and tied at this place to aid in the escape.

"It was a dark-bay horse; he had a star on the forehead if I recollect right; think he had one white foot. Trappings, a citizen's saddle, and a piece of woolen blanket under it. A soldier's blanket, I think it was; saddled and bridled. About fifteen minutes after I passed this horse a man rode up to me on this same horse, and asked me if there would be any trouble in getting through the pickets, or something of that kind; do not recollect what I told him exactly, but I think I told him I thought there would be, or something to that effect; asked him if he had heard the news of the assassination of the President. He did not make any answer, but gave a sneering laugh. He appeared to be very uneasy, fidgety and nervous."

He looked just that way when he got on the steamer, and even when in mid-ocean, on his way to England, he looked that same way. He thought everybody he saw was a detective coming to take him. He would be startled and nervous whenever any one came near him on the ship. It began after the bloody deed. It always begins after that, and the nerves never get steady again—never, never, never!

"There was a man coming from the city, an orderly, I think, carrying dispatches to Fort Bunker Hill. As soon as he saw him coming he rode away; said he thought he would try it, and rode away. (The prisoner was here requested to stand up in such a position that the witness might see his back.) Think I have seen that back before on that horse."

You remember the appearance of the witness. He was not cross-examined. I suppose for the same reason that the ferryman was not. They thought the more he was cross-examined the more likely it would be to be made stronger than it was.

Now let us see what next happened in the order of time. You had it in evidence before you that the railroads after this were stopped; that they did not go as usual. Where did this man go after this man saw him? This horse has never been found—the only one of all these horses that has not been found and identified.

You, gentlemen of the jury, will remember the finding of the horses, and their being identified. You will remember, I am sure, the condition they were in, one of them with puddles of sweat around him. This horse has never been found. Where he is I do not know, and I do not know that anybody knows. But the man who rode him has been found. And where did he go to? The next place we find him is on the boat going from White Hall to Burlington, Vermont, on the night of Monday following the assassination—the first trip the boat made that season. He gets to the depot at Burlington; a short man is with him, who does not talk. This man talks "Canuck," as you will find from the evidence I shall read. They are too late for the train. They ask permission to sleep in the depot. They lie down on the settee, and at four o'clock they are called, take the train, hurry off. Just after they left, Blinn, who kept the depot, picked up from where the tall man lay a handkerchief, and on that handkerchief was written the fatal name, "John H. Surratt." He picked it up that morning. There is no doubt about that fact, much as they tried to make it appear differently. What next? You next hear of him on the railway. Mr. Hobart finds two men standing on the platform, who profess to have no money. The tall

one does the talking; the other one says nothing. They pretended they had been laborers in New York, and had not any money. You can easily see why he wanted to appear as a laborer. The witness tells you that he undertook to talk what he calls the "Canuck," but when he grew earnest in urging him to allow him to remain he forgot the "Canuck," and passed into good Yankee English. Let us see what he says about it. I read from the testimony of Blinn:

"The first passenger boat of that season landed its passengers at Burlington that season, the 17th of April, Monday. It did not arrive in time for the passengers to take the train; it was four hours late; it arrived about twelve o'clock in the night; was on the watch that night in the depot. There were two men who came in from the boat; one was a tall man, and the other shorter. They requested permission to sleep in the depot until the train left for Montreal. The train left at 4:20 the next morning. That boat came from White Hall and connects with the cars from New York city. It runs from White Hall to Rouse's Point, on the lake. They requested permission to sleep on the benches in the depot. The taller gentleman did all the talking. He wished to know if he could sleep there. I asked him if he did not wish to go to a hotel. He said he thought not; he was going to Montreal on the early train, and would like to sleep there in the depot. I called him in time for the train, about four o'clock in the morning, on Tuesday morning, the 18th." "After he went out did you see anything where he had been lying? Just look at it and state if you recognize it as the same." (After examining it.) "I do recognize it as the same handkerchief." "Where, in relation to where the tall man slept, was that?" "That was near the seat, on the floor, where his head lay." (The handkerchief was here shown to the jury.) "Is there any name on it?" "Yes, sir; 'J. H. Surratt, 2.'"

Now here were two men, one tall and the other short, and Blinn tells you that under the head of the tall one, where he lay, he found this handkerchief, marked "John H. Surratt." Let me trace them, and see where the two men, the tall one and the shorter, were next found. But first I ask you to remember what day this was, and to notice it was while Holahan was still in Washington, and before that dirty handkerchief, which John Surratt had left and which had been washed by Susan Jackson after Friday, when he was there, had passed into the hands of Holahan at all. He had not left Washing-

ton as yet. I am coming presently to when he left and when he got that handkerchief.

I come now to the testimony of Hobart.

"Between the 10th day of April, 1865, and the 20th day of April, 1865, was the conductor on this road. I got the passengers from the first trip up the lake by the boat on Tuesday morning, in April."

No chance for any mistake here.

"I think it was a clear night, but I am not sure. I started from White River Junction at 11:55 at night; I cannot say whether we were then on time or not, but that was the time of starting directly to St. Albans. I arrived at Essex Junction at five o'clock in the morning—Tuesday morning. I left Essex Junction with the passengers from Burlington and the boat on Lake Champlain. As I went through the train I found between the passenger car and the sleeping car two men standing on the platform; they were on the platform of the passenger car, one on each side of the door. I spoke to these men, and asked them for their tickets. They said they had none, and that they had no money; that they had been unfortunate."

You can easily see why they wanted to conceal themselves, of course, they being criminals in flight. If they could conceal themselves as laborers, just as Payne, when he came to Mrs. Surratt's, undertook to conceal himself as a laborer, they could get along without being stopped until they got out of our jurisdiction.

"One of them was tall; he was about my height as he stood up in the car; he was rather slim; had on a skull-cap—one of these close-fitting caps—and short coat. His vest was opened down low, and his scarf came over under his collar and stuck in his vest."

I will call your attention to this presently, when I read to you the statement of St. Marie of what the prisoner told him in Rome, when walking with him on that afternoon, as to how he made his escape from Washington, and what disguise he had.

"The other man was a short, thick-set man, of sandy complexion, with whiskers around his face, and had a slouched hat on. His whiskers were sandy, I think. He was a rough-looking man.

"I told him to come into the car, and put my hand on his shoulder; he came in; he said that three of them had been to New York;

they were Canadians, but had been at work in New York; that they had received some money two nights before—I won't be positive about the time—and that a third party who had been with them got up in the night, took all the money they had, and left; that he had left them without anything—in a destitute condition. He said they must go to Canada; that they wanted to get home; that their friends lived in Canada, and that when they got home they would get plenty of money, and would remit the amount of fare to me. I told them that I could not carry them. I spoke to them of the necessity of having money if they were going to travel, and that I could not carry them through free. They expressed themselves as very anxious to get through. I told them that I should leave them at the next station—Milton, between Essex Junction and St. Albans. I was busy when I got there with the train, and so forgot them. I went through the train again after leaving Milton, and found them in the rear end of the car. I tried them again to see if they had not some money. They said they had none, but that they must go to St. Albans; that when they got there they could foot it. They inquired of me how far it was to Franklin; that they were going through the country. I asked them how they were going to get there? They said they were going afoot. Franklin lies northwest of St. Albans fourteen miles; I think the distance is about four miles from the line—the Canada line."

You see by the map that Franklin is near the Canada line, and, as we shall show, from the time of their arrival at the hotel in Montreal, they probably went by Franklin. They did not go by train after it was discovered that he had lost his handkerchief and it had been found, and they did not get there until some time later than the train arrived.

"Asked how they were going to get to Franklin, they said that they would have to go afoot; they had no money to pay their fare on the stage; that if I would carry them to St. Albans, they would try and get home, or where their friends were. The tall man did this talking. This tall man tried to use broken English, as if he were a Canuck, but occasionally he would get a little in earnest for fear he would be put off, and then he would drop the Canuck and speak good square English."

I think you can understand that. When men undertake this imitation and find themselves growing earnest, or when they undertake to disguise their handwriting and begin to forget, or their walk and begin to forget, or their tone of voice, they will always turn from the Canuck and speak "good square English."

"That was what aroused my suspicions that things were not all right, that they were traveling incog., and I urged the matter more than I would if they had been really poor people and I had had strong proof of that fact. The tall man's hands were not like those of a laboring man; were not like those of a Canadian who had been used to hard labor. They were white and delicate; took them to St. Albans. When they got to St. Albans they went out into the yard on to Lake street. I went into the general ticket office to attend to my business. The train was due at St. Albans at 9:45 a. m."

Now I shall show you that they did not get there until several hours after that; that a thing which I am now coming to occurred at St. Albans which prevented them from taking the risk of going on the train, and they struck across the country, and did not get there until later, as the proof shows. Mr. Hobart was further asked:

"Have you seen anybody in court today that looks like the tall man that you saw?" "The man that stood up before me resembles that man that I saw very much. I should not recognize his face. He had at that time a moustache, with no whiskers on his chin."

They all give that account, as you will see. Nobody ever saw any whiskers on that chin for a long time after that barber Wood had hold of it.

"He had a cap on. It was drawn over his forehead in the usual way."

I now come to the testimony of Chapin. This will show that all that has been said about the loss of this handkerchief and the time it was found is true for Chapin himself (having first stated that he saw Blinn at the depot) testifies as follows:

"He showed me an article; I looked at it, and I told him I would like to have it, a pocket handkerchief. It was marked 'John H. Surratt,' I think, 'No. 2.' Should not recognize it from the way it looked then, because then it was very dirty. I think it is the same handkerchief. It looks like it."

During the cross-examination, he is asked:

"When did you first see it?" "On the Wednesday evening previous." "What enables you to fix that date?" "On Tuesday morning, when I returned from New Haven, I went directly home. I

live two miles out of Burlington. Then about the middle of the day, Tuesday, I drove over with my team and reported to the office, and returned immediately back. My wife was very sick. I stayed there until Wednesday. On Wednesday I went down to Essex Junction and left my team, and went down in the Wednesday evening train. And you think it was on that Wednesday you first saw the handkerchief?" "Yes, sir."

Thus it will be seen that Chapin had seen that handkerchief before Holahan had any chance to lose his.

I have shown you, gentlemen of the jury, on the subject of the flight of the prisoner, by the testimony of Mr. Hobart, that the hour of arrival at Montreal of the train in which this man was going with him was 9:45, and that he inquired the way to Franklin, which was close to the Canada line, and told him that he was going across the country. He probably took the course that he said he would from this fact: I have here the register of the St. Lawrence Hall Hotel, of Montreal, containing the entry of his name, from which it appears that he arrived there at 12:30 instead of 9:45. Instead of going by the regular train, after he got to St. Albans, he escaped and went across the country, and reached there at 12:30 noon, three hours later than he would have arrived if he had gone by the train. You will presently see when I come to that portion of the evidence why when he got to St. Albans he did not go on in the train to Montreal, but went in some other direction, and did not reach Montreal until some three hours after the regular time, in consequence of his going an irregular way.

You will likewise see from this same register that he reached this hotel in Montreal at 10:30 on the 6th day of April, 1865. This is one of those pieces of evidence which come in, as evidence will come in, as I have often said, where it is true, to set at naught and scatter to the winds all these wild theories of my learned adversaries about "physical impossibilities." You will remember that John Surratt was here in the city of Washington on the night of the 3rd of April, 1865. That is conceded; and yet, leaving here the next morning, he arrived in Montreal at 10:30 on the morning of the 6th, by the con-

cessions of everybody. Cannot he come just as quick from Montreal to Washington as he can go from Washington to Montreal? My friend's "physical impossibility" has again, in this instance disappeared.

First find out whether a thing is true or not; and, if it be true, you can always find out some way to get at it. If it is true that a man was here in Washington at a given time, and it is true that he was in Montreal at another time, you may be entirely sure that somehow or other he got from one place to the other place. Whether he went by a special train, express train on schedule time, or on a freight train, is not a matter of any consequence. The question is, what is the truth about it? Was the man here? Yes, that is conceded. Was he in Montreal? Yes, that is conceded. Well, then he got there somehow or other. It is not worth while for us to puzzle our brains very much to know how he did it, nor to be disturbed by anybody getting up and talking about physical impossibilities.

I presume you all remember very well that it was a "physical impossibility," a few years ago, for a steamer to leave Liverpool and reach New York. There was not any doubt on that subject. It is filed now in the English admiralty. The demonstration was made there. The demonstration had hardly got dry before the *Syrius* crossed the Atlantic and threw out her cable in New York. It is not worth while to be troubled much about physical impossibilities when you find the fact is so. The "physical impossibilities" in this case are all out of the way. There was a "physical impossibility" here about ten days ago to come from Elmira to the city of Washington and go to that barber shop at a certain time. After we got Mr. DuBarry back again that "physical impossibility" vanished. We find no trouble about the physical impossibility of Surratt being here on the night of the 3rd and getting to Montreal on the 6th. He could come back just as swift as he could go. That physical impossibility is out of the way.

You will remember that a Mr. Conger and two gentlemen

by the name of Sowles supposed they saw this man in St. Albans on the morning he got there. You will remember his inquiries of Hobart about Franklin. You will remember that if he had continued on the train he would have reached Montreal at 9:45, and you will also remember that he did not reach there until 12:30, because he probably went by way of Franklin, having got alarmed in St. Albans as you remember, when he heard it said there that the handkerchief of John H. Surratt had been found at Burlington, and found, on putting his hand on his courier's bag, where the handkerchief was, that he had lost it, and he thought it was time for him to make himself scarce. That he told himself.

You will bear in mind that he told St. Marie in Rome that he had escaped from Washington on the morning after the murder in the disguise of an Englishman. That same disguise was on him when Hobart saw him on the train, when he pretended to be a Canadian—a Canuck. The same disguise was on him when his cap was on his face. The same disguise was on him when he was in St. Albans and had on the English courier's bag, which perhaps you have seen. I have seen many of them in England and many of them on the continent; and I have noticed every once in a while, when some fellow returns from his travels in Europe, he begins to travel about between here and New York with one of these English courier bags on his side. He gets rid of that courier bag before he has been at home two months, if he has any sense. Our people do not like those kind of things. But this man wanted to disguise himself as an Englishman. He put on the togery and snobbery of an Englishman and started off from here with it; and when he heard that his pocket handkerchief had been found, he says he put his hand on his courier's bag, where he carried his handkerchief, and found it was gone, and he thought it was time to make himself scarce, and he left St. Albans. The next we see of him he turns up in Montreal, registering his name at St. Lawrence Hall, at 12:30, three hours later than the train arrived. Let us see what he

did after he got there. I read from the testimony of John Sangston, bookkeeper of the St. Lawrence Hotel, page 47:

"Now turn to the 18th, when he arrived again, and tell us how many hours or minutes he stayed on the 18th?" "He did not stay any time in the hotel; I do not know how long; he just came into the house; do not know where he went; he went somewhere and was secreted in the city, I believe. He left the hotel instantly."

This was on the 18th. Why did he leave the hotel instantly? He had been in St. Albans; he learned there that his handkerchief had been found at Burlington; he thought it was time for him to make himself scarce; he went across the country, instead of going by the regular train, and got to Montreal, entered his name on the register of the hotel, and left there instantly, and was secreted somewhere in the city. He told afterwards where he was secreted. He was secreted at Porterfield's house until he went to St. Liboire, to Boucher's house. Why was he secreted? He had not done anything wrong. He had committed no crime. He had been in Elmira all this time. I am coming to that presently. He had not been in Washington. These thirteen witnesses, several of whom had known him from his boyhood, who swear to having seen him here at different hours during the day, and narrate minute circumstances, such as shaving him, holding conversations with him, etc., are all mistaken. He was not here, but was in Elmira. The ferryman who brought him across the river, the other man who talked with him when he came to inquire the way across and the mode of connection, and who thought he was a southern spy, are likewise mistaken. That makes fifteen witnesses, all of whom are mistaken. He was in Elmira. Well, will not the gentlemen tell us where he went to when he went to Elmira? Will not they tell us how he got on that boat? Will not they tell us why he went in disguise? Will not they tell us why he hastened through that hotel and left it so suddenly? Why he went across the country from St. Albans, instead of going on the regular train? Why he was secreted in the city of Montreal? He had done nothing wrong. He is an innocent man. Why is

he flying? What is the matter? Men used to do that before when similarly situated. They began it early. Here is a little bit of its history:

"And the Lord said unto Cain, Where is Abel, thy brother? And he said I know not. Am I my brother's keeper?"

"And he said, What hast thou done? The voice of thy brother's blood crieth unto me from the ground.

"And now art thou cursed from the earth, which hath opened her mouth to receive thy brother's blood from thy hand!

"When thou tillest the ground it shall not henceforth yield unto thee her strength; a fugitive and a vagabond shalt thou be in the earth."

That was the primal curse pronounced by the Almighty upon murder, that the man should be a fugitive on the earth. The prisoner followed it out. He fled to the uttermost parts of the earth, even into Egypt, and he was brought from thence back to the city of his great crime.

That there may be no mistake on this subject, I read from St. Marie's evidence:

"What read did you go?" "Outside the city of Velletri, on what is called the road to Naples." "Did you talk to the prisoner?" "Yes, sir; I was occasionally speaking with him in English, and occasionally to the two others in French." "Did the prisoner tell you at this time anything about his disguise? If so, what?" "Yes, sir; I asked the prisoner how he got out of Washington; if he had a hard time in escaping. He told me he had a very hard time." "How did he say he got out from Washington?" "He told me he left that night." "What night?" "The night of the assassination, or the next morning, I am not positive." "What was the disguise, if any, he told you he had?" "He told me he was so disguised that nobody could take him for an American; that he looked like an Englishman; that he had a scarf over his shoulders. He did not mention any other disguise that I remember."

You have heard the witnesses tell you about that scarf, and about his face, and about his cap, and you will hear presently what was told you about the courier's bag, which the Englishman always carries when he is traveling. Thus did he escape, and thus did he attempt to impose his broken English and his Canuck dialect upon Hobart when he was trying to pass himself off as a laborer, just as Payne claimed to be a

laborer when he came to that house where he had plotted this murder.

You will notice this curious thing, gentlemen, in this case: that an attempt has been made by the defense to undertake to show that, to be sure, there was a foundation for the things the Government prove, but really it was something else, and, as one of the counsel said, they were remarkable coincidences. They were very marvelous coincidences. They were so marvelous and so strange, that I think they were stranger than any truth; as we have always learned that truth is a great deal stranger than fiction. One of these things was this: They first brought Gifford, as you remember, upon the stand, to prove that Dye was lying when he said he was there on that platform. Gifford told you that there was not anybody out there. He said if there had been he should have seen them and put them off the platform, as it was his duty to do. Carland told you likewise that if there had been anybody on that platform Gifford would have put him off, and they were very positive about that, as you will remember. Having got the proof in that Dye was not there, they then brought in little Hess to prove that he was there, to prove that he (Hess) called the time "ten minutes past ten o'clock," in order to show that Dye, who was not there, and Cooper, who was not there, had heard exactly what they professed to hear when they were not there. That is one of those inconsistencies which always come of things that are not true. They did not see where it was landing them. With great care did they bring Carland and Gifford to show that Dye could not have been on that platform at all, for if he had been, they would have seen him and put him off; and yet, forgetting that, they bring on Hess to say that he called the time "ten minutes past ten," and Carland to say that he told him the time.

Now, let us look at what Hess and Carland say? It is curious, it is a little interesting, to take up these attempts at making up something that is not real. You cannot do it. You cannot make fiction like truth by any contrivance. The one has the real stamp of the pure gold; the other is a forgery,

and it does not take a very great expert to tell them. I am not such an expert in these things as are the men who can tell bank notes and false coin by the touch; but I am expert enough and have had experience enough, to tell the difference between a man who is telling the truth and a man who is making up a story; and the one telling the lie will have good luck if he gets rid of it. It is not difficult. You can tell it. I can tell it. All men can tell it who watch it. Now, I will show from their own statements that this is a made-up-story, and that there is not a word of truth in it. I read from little Hess' account. He is the one, you know, who was Surratt, and looks so like him you cannot tell them apart! He says:

"I was not in the American Cousin, but was in a song that was to be sung after the performance of the American Cousin. Mr. Carland and Mr. Gifford were there before I was.

That is on the front step.

"As I came out of the theater I met them at the door. I went right back into the theater again."

Carland then came on and told his story. He had been out in the witness room, and he had not heard little Hess' story, and so he came on and found himself in a fix. He did not know what a cross-examination was. I do not believe he had ever had one before; and he did not know what sort of questions were going to be asked him, and he contradicted Hess dead flat. They had not fixed it up together, or if they had, they had not fixed up this part. They never do. They cannot do it. They do not know what is going to be asked. If they tell the truth, they do not want to fix up anything. If they tell one lie, one generates another, and another, and another, until ten thousand lies are made from one, and no two are consistent with any truth. They cannot carry them out—never, never. I am never afraid of a liar on the stand. This was a lie. Let us see if it was not:

"Did you see them afterwards?" "I did not." "When you came out and spoke to them was anything said about the time?" "Yes, sir; I asked them what time it was. Mr. Carland walked as far as

the first door in front of the theater, leading into the audience department, looked at the clock, and came back and told me it was ten minutes past ten. Says I, "Ten minutes past ten; I will be wanted in a few minutes."

When I came to cross-examine him further, you found that he was not wanted until after the play was over; and this was long before the play was over, or near over, and yet he said, "I will be wanted in a few minutes," and then left immediately and went back into the theater again. You will note this, if you please:

"I do not think I had been there more than two minutes when I heard the discharge of a pistol."

This is Hess' story, as he told it to you. Carland did not hear it fortunately. If he had, I do not believe he has intellect enough to put it together and remember it. He could not have kept it straight if he had heard it, but he did not hear it, as you will see when I come to read his testimony. Hess says further:

"What afterwards happened I do not know, because there was an uproar all over the house at that time."

Now we come to his cross-examination:

"Won't you give the jury a specimen of how it was done? Says I, 'Mr. Carland, what time is it?' He walks up in the direction of the clock, and then says, 'Ten minutes past ten.' Says I, 'Ten minutes past ten; I am wanted in a few minutes.'"

Is there any truth in that? The play was not in a position to have him wanted in a few minutes. There was not a word of truth in it, as you will presently see. It was fiction:

"Did you think there was anything extraordinary in its being ten minutes past ten? No, sir; I did not until they spoke about it. Then you had to hurry, did you?"

Will you note this?—

"Yes, sir; I had nothing else to do, and I thought that I had better linger inside than outside. The play was not then near over when the President was shot? No, sir; I think the second scene was on."

That is little Hess' own statement. He did not know about that cross-examination, that it was going to trip him up there when he was telling that other lie. He did not think of it. The second scene was only on, and yet he threw up his hands and said, "Ten minutes past ten! I shall be wanted in a few minutes." He admits that it is all a lie, or all untrue—not a fact. This is from his own showing. I am coming to what Carland shows presently. Let us go on with Hess:

"There was no occasion, then, for you to be in a great hurry? There was no great hurry."

That little fellow is not smart enough to lie. He ought always to tell the truth. He cannot stand a lie. He is not equal to it. It requires a great deal more intellect than he has.

"And you did not hurry? No, sir; I walked on leisurely."

He was tremendously startled on his direct examination—so much so that he threw up his hands. Now let us see what Carland says about this same story. I turn first to where he is asked in order to show that Dye and Cooper were not there on the platform:

"At the time you went out to that platform was any one sitting on it? I do not think there was. There might have been, but I have no recollection of it. If there had been, Mr. Gifford would certainly have spoken of it and made them get off."

Mr. Gifford told you the same thing. Therefore, they were making it pretty clear that Dye and Cooper were not there to hear this calling of the time which they found it so important to make out that Hess called instead of Surratt. That was a blunder. It was not very wise. On the cross-examination he was asked:

"After you told him what the time was, did he say anything? He said it was very near time for him to go and get ready."

I want to call back your memories to that cross-examination, because I have just read to you, and you had then fresh in your minds, the antics through which little Hess went

when he threw up his hands and told you about "ten minutes past ten! It is time for me to dress in a few minutes;" and then afterwards said it was only in the second scene and nowhere near time to dress. He told it twice, and yet when I came to examine Carland he answered thus:

"Was that all he said? Yes, sir; I do not remember anything else. He did not say anything else about the time, did he, except to ask the time? I think he made the remark that it was pretty near time for him to get ready for the song. That is every word that I can call to memory just now."

It is very strange that he could not recall that sudden exclamation and throwing up of hands by Hess, and which was to be turned off on to Dye and Cooper as having been said by Hess instead of Surratt. Let us go a little further. I have just read you what Hess said, that he went right in the theater and did not come out; he thought that was his best place. Now let us see further what Carland says:

"Which way did he go after he said it was time for him to dress—that being all he said? He went up the street, I believe"—

Hess told you right the other way, that he went right in the theater; but, as I told you, Carland did not hear Hess' testimony:

—"then turned, and, as far as I can recollect, went into the theater. What is your recollection about it? Did he go up the street, or go directly into the theater? I cannot call to mind which."

He began to see that he might be in some danger; he showed it in his face:

"What is your best recollection? The fact is, I have no recollection at all about it, any more than his being there."

What, in Heaven's name, did he come on the stand for and be sworn if he had no recollection about it! He had not any. He saw he was going to get himself into a scrape; he knew very well from the tenor of these questions that he was running into a difficulty, and he did not know where it was going to lead him, and so he turned it off in that way.

"Do you think he went up the street? He may not have gone very far. Do you think he went up the street? I cannot say whether he went up the street or not."

Men of that kind always throw themselves off in that way. They know nothing when they see they are in trouble.

"What do you wish the jury to understand—that he went up the street, or that he did not? He walked backwards and forwards for a minute or so. He went up above where we were standing. He came back again. I have no recollection whether he went into the theater."

That is the way he got along with his testimony after all this pantomime of little Hess, who threw up his arms when he heard it was ten minutes past ten, and repeated it over, as he states, and Carland was the one who told it to him, and he never heard a word of it. Hess also says that he went right back into the theater; and yet this man cannot tell whether he went back into the theater, up the street, or where he went.

They used to have a way of judging of this same sort of thing many years ago. I will read you a little bit of it:

"For many bare false witness against him, but their witnesses agreed not together. And there arose certain and bare false witness against him, saying, We heard him say, I will destroy this temple that is made with hands, and within three days I will build another made without hands. But neither so did their witness agree together."

Those witnesses never do. They cannot get along with them.

There was another curious attempt of the same kind, which worked in the same way, as these things always will. You remember the testimony in relation to Sergeant Dye and Cooper passing Mrs. Surratt's house, and her lifting the window, and inquiring what was going on down town. They were the first men who passed on the street after the assassination. The street was silent. They met two policemen and told them the news. As they passed along H street this woman threw up the window at No. 541, and made this very

significant inquiry. The other side felt the force of that testimony, and so they wanted to get rid of it. Let us see how they attempted to get rid of that. They brought a Dutchman named Kiesecker, who lived in a house on another street—Sixth street, I believe—and his lot and house ran back towards Mrs. Surratt's. You will remember that there is an alley between the lot and Mrs. Surratt. They bring this Dutchman upon the stand to state that he sat there smoking on those steps until eleven o'clock that night, when his wife called him to bed. He is asked, "Did you see anybody pass?" "No; nobody." "Did you hear anybody talking at Mrs. Surratt's window?" "No." It is not very likely he did at that distance. It would be very strange if he did. "The street was all still?" "Oh, yes, the street was still." "You heard nobody talking?" "No." "Saw nobody pass?" "No." "When did you leave?" He thought he was there until near eleven o'clock. He could not tell what kind of weather it was; he could not tell whether there was a moon or not; but he says he was there, and did not hear anything until his wife called him to go to bed. He was brought here for the purpose of showing that no such conversation occurred, and that nothing could have happened there or he would have heard it. While he sat there smoking his pipe, not a soldier passed, nobody passed, and he heard and knew of nothing, he says, until the next morning when he first heard about this murder. They did not call his wife Katrine. If they had put Katrine on the stand, she probably would have told you that she did put her husband to bed that night; that in order to make his pipe taste good, he had taken a little lager, and that he did not know the difference between nine and eleven o'clock when she tucked him into the bed.

That, somehow, did not work to their satisfaction, and what next was done? Some weeks rolled on, and they then brought on this stand a Mrs. Lambert—first, however, bringing on her son to describe the house in which his mother and himself lived, which was a block and a half or more further up the street. Gentlemen, I hope you have passed Mrs. Lambert's

house and Mrs. Surratt's house. I have. If you have, did you see any resemblance in their modes of entrance? At Mrs. Lambert's you go down to get into the basement. Mrs. Surratt's house has on the right side an alley, the basement entering in from the pavement, the front stoop going clear up to the second story. Mrs. Lambert's house is not of that kind at all. I hope you have passed them. If you have not, I hope you will, and see whether you think they look very much alike. Mrs. Lambert on that night goes to the door and stands on the stoop. While she is standing there her colored servant comes and tells her it is too damp and gets her to come inside. She then goes and stands at the parlor window. A great many soldiers, she says, pass along, and then two soldiers, to whom she spoke and with whom she had a conversation. She could not give much of a description about it, but there were a great many passing and tramping by there at the time. The city, as you will remember, immediately after the assassination of the President, was all in commotion.

"Ah! then and there was hurrying to and fro
And gathering tears, and tremblings of distress.
And cheeks all pale, which but an hour ago
Blushed at the praise of their own loveliness."

But the Dutchman sat there until eleven o'clock and never heard a word of it; nobody passed before his vision. But Mrs. Lambert put them in this plight, and they saw it. Mrs. Lambert had put it all out of joint. Mrs. Lambert said she was sure it was between eleven and twelve o'clock at night. The murder, you know, was at some two minutes after ten minutes past ten. The counsel saw the fix that that would put them in; and so, after the close of the cross-examination, they asked her this question: "State whether you are satisfied this conversation was after eleven o'clock," evidently hoping that she would change it; but she did not understand that part of it, or she meant to be truthful—I care not which way it is—and she answered, "Yes, sir; between eleven and twelve." She nailed it as she had done before. That did not answer the purpose very well, for long before that time Ser-

geants Dye and Cooper had been out at their camp, and the city was all in confusion. I have said to you, gentlemen, I am never afraid, in a law suit, of lies. Truth is the only danger.

Driven from every point on that subject, we next hear from the counsel, toward the end of this cause, of another physical impossibility. The first impossibility was getting the prisoner from Elmira to Washington. They had him at Elmira on the 13th by their witnesses. We had him in Elmira on the 13th. We both agreed about that. But finally, when that physical impossibility had vanished, a few days ago another physical impossibility sprang up in the mind of the counsel on the other side, towit, the physical impossibility of his getting from Canada to Elmira. That was a new thought. He brought certain railroad statistics, called Mr. Ball's attention to them, and asked him to note them down, and brought the train along down to Elmira at eight o'clock p. m. on the 13th; it was a physical impossibility to get there before. You will remember that day. You took it down, Mr. Ball; I saw you. Eight o'clock on the 13th was the earliest moment it was possible for him to get into Elmira. That was a new idea. How did he get at it? How came that about? Up to that time they had had him in Elmira, talking that day with Carroll, seen that day by Stewart, seen by his partner.

We will see. I am going to read the evidence. I do not rely on what I say, but on the evidence. But here comes up this difficulty: there was no earthly way of getting him there. Somehow or other he had been there. Their witnesses had seen him and ours had seen him, and had brought him across the ferry and talked with him about the connection, and they thought him a Confederate spy. But now springs up in the mind of the counsel a physical impossibility. So he takes the railroad guides or the railroad schedule time and comes down from Montreal to Albany, goes from Albany to Canandaigua, from Canandaigua to Elmira, and brings it out that eight o'clock at night was the earliest moment there was any possible way of his getting there. That was a little curious. Did he take any of those special trains? We had a physical im-

possibility in getting him out of Elmira, you remember, before. That physical impossibility was overcome very easily when we got at the truth. We have never taken any pains to overcome these physical impossibilities, because they were to us of no moment. We did not take any pains, when he was in Elmira, to show how he got there on that day. Our business was to bring him to Washington. But, gentlemen (pointing to the map), do you see that road that goes to Ogdensburg? My friend was mighty careful not to say a word about that, and not to say anything about the arrival of trains on that road. If you want to come from Montreal as quick as you can to Elmira, that is the road you take. You do not come down to Albany, and then go clear across there to get to Elmira. That is not the quickest way of getting to Elmira, and never was since the railroads were built. Mighty careful was the counsel to shun that road, or any other than one particular train and one particular connection, in order that he might bring it there at that particular time. There is no difficulty about that physical impossibility.

Mr. Bradley. In regard to that matter, all I can say is, we have the schedule time from Rouse's Point via Ogdensburg to Rome, but he cannot get to Elmira except by connecting with the same road that comes from Albany to Canandaigua, and he must take the same track exactly as the other. It was competent for the counsel on the other side, after we had demonstrated the impossibility of his getting there by the route indicated, to have shown a different route, and as they failed to show it, it was not necessary for us to show it; but we have the tables showing that the time is the same from Rouse's Point to Ogdensburg, thence down to Rome, which they must reach, thence to Syracuse, and from there to Canandaigua, for they cannot connect with the Central road otherwise.

Mr. Merrick. If you will take that map as it stands, by the scale on that map you will find that the route the counsel has marked out is just as long in point of distance within a very few hours, and you could not get into Elmira by any possibility, if every connection was made, until five o'clock in the afternoon. There is also a road on that map which was made since 1865, and not in operation then. Further, if you have any difficulty about that, here is Appleton's Railroad Guide for March, 1865, and one for 1867, which I am perfectly willing should go to the jury.

Mr. Pierrepont. I suppose so. Would you find in Appleton's Guide the trains from Elmira to Baltimore on that

day? Those do not go into Appleton's Guide. The Grand Trunk railroad, over which he might have come, which is the shortest way to come, is not in that. We found him in Elmira, and our business was to bring him to Washington, and we brought him here notwithstanding the physical impossibility.

Mr. Bradley. Surely we misapprehended each other. You put him on the New York train to go south at 3:30 on the 12th of April. That must come to Rouse's Point. At Rouse's Point the two roads diverge, one to Ogdensburg, the other to Albany. The road by Ogdensburg goes down by Rome, and you cannot reach the great Central to get to Elmira until you make the same connection with the seven o'clock train from Albany.

Mr. Pierrepont. Gentlemen, we put him upon no train whatever, as you will see when I read the evidence. The clerk of the hotel stated that he started at that hour to go to the New York train. He did not put him on the New York train, nor did he know that he ever went on the New York train, nor at what point he stopped, nor by what special train he went, any more than he knew by what special train he came from Elmira to the city of Washington. I have shown you that the time from which he left here and went to Montreal was no longer than the time from which he left Montreal to come here; and the shortest way that he can come to Baltimore is to go in this straight line (indicating on the map) up here to Elmira. He may go by the Grand Trunk road on that side of the river and cross here, and he may come down there to Utica or to Rome, then form that connection, and it is almost a straight line, only diverging there on that road to come here. But it was not our business to trace him. We cared nothing about what road he got upon to get to Elmira. There he was. The point was whether he came here.

Mr. Merrick. Do I understand you to say that that is the shortest road?

Mr. Pierrepont. I am not speaking of the shortest road. I am speaking of the time and the directness; and we cannot

tell when there are special trains or when there are not, without getting the people who run them, exactly as it was at Elmira. The question is, what is the fact? Was he there? If so, he got there, and there was plenty of time for him to get there. Further than that, the gentlemen have been arguing with very great zeal about the matter, as though he left Montreal at three o'clock in the afternoon. There is not one particle of evidence of that sort, and I challenge them to show it.

Mr. Bradley. All I can say is, you have proved that he came by the 3:30 train.

Mr. Pierrepont. No, we have not. This clerk said he left the hotel at that hour, but he did not state that it was in the afternoon at all, as you will see; I am going to read it. There is no evidence whatever in this case indicating anything of the kind, nor that he could not have come by these different roads, and that he could not have got to Elmira at the time indicated. I read:

"The train left at three o'clock; leaving the house at 2:45 on the 12th."

There is no information whether it was in the day or at night. The fact was that he got to Elmira, and could easily have got there by special train or by other trains as they might have been running, for you will remember that at that time there were breaks in the road, and the trains were running irregularly, and the schedule time is no evidence at all of the way the trains were running. The fact was that he got there, and the physical impossibility is out of the way, and he came from there to Washington; and we got that physical impossibility out of the way, and so we would have got the other if it had been of the smallest importance; but we cared nothing for it and never gave the least attention to it.

Having followed the prisoner in his flight to his arrival in Montreal on the 18th, where he arrived at 12:30 and left the hotel instantly and was secreted somewhere in the city, I now

come to the testimony of Boucher. Let us see what he tells us about that:

"Where did you first see the prisoner? In St. Liboire. I think it was on Wednesday evening. Who came there with him? Joseph F. DuTilly. It was in the evening, and I was in bed; heard them say that they came in a cart. They reached my house at nine or ten o'clock. Didn't they give some name? Yes, sir. What name? Charles Armstrong."

Why did he go to Boucher's house and secrete himself there? Why did he give the name of Charles Armstrong? He was entered in the register of the hotel only a few days before as John Harrison. Why was he so fond of these changes of name? He was an innocent man, you know. His counsel tell you so. He had just fled; he had just got there; he had not done anything wrong; he was not engaged in this conspiracy, and yet he goes there changing his name. He seems to have had that same stamp which the Almighty put upon Cain, that he should be a fugitive for that blood, and he was fleeing and concealing himself. Why? There was some reason for it, was there not?

"When did you first suspect that he was John H. Surratt? About ten or twelve days after his arrival at my place. Did you in early May? By that time, or the last of April."

Now, so early as that, when a reward was offered by this city and by the Government, published in the newspapers and noticed all over the world, this man secretes him there under the name of Charles Armstrong. And yet, many months after that, perhaps a year, he was off in Rome, and the Head of the Church, which this Boucher so wretchedly vilifies, instantly gave him up to justice, hastened to do it because of the enormity of his crime, even before the authorities of this Government asked for it. I have said that that priest will hear from his Pope and his bishop; and he will. The Pope would not tolerate the crime; the bishop will not tolerate it. None of the noble people of that noble Church tolerate a crime like this. Nobody who was not in sympathy with such a crime would tolerate it, wherever he was; and the shame

that Boucher has brought upon his Church by the secreting of this criminal will be wiped out by that noble Church itself.

"After you found out that he was gazetted in the papers as one of the murderers and conspirators, you let it be known to the authorities, I take it, didn't you? Didn't you communicate it to the authorities of the United States as soon as you found out he was the one? No, sir. Didn't you tell it? No, sir. Did you try to conceal it? I did not speak of it. Did you try to conceal it? Never spoke of it. Did you try to conceal him there? He remained in my house without any outside communication except such as I have related. I ask you if you tried to conceal him in that house? I do not understand your question. Don't you understand what concealment means? Did you take the means of concealing him in your house? My house was visited by my parishioners every day. Did they see him? No, sir; some of them did when he went out hunting. Did they frequently see him? No sir. Did you let your parishioners know that you were keeping in your house a person published as one of the President's assassins? Not to my knowledge. How came you to come here to testify? I came of my own accord. Can you tell any of those who hunted with him? Joseph F. DuTilly.

DuTilly was the witness who came on the stand to speak against Dr. McMillan. Boucher had been talking about the prisoner being sick; and so I asked him:

"What physician attended him during all this time that he lived with you? No physician at all. Won't you give us the day of the week that he left your place to go away from you? I cannot. Will you give us the day of the month? I cannot. Will you give us the month? In July; the latter part of July. Where did he go? To Montreal. How often did you see him after he went to Montreal? I used to see him about twice a week."

He lay there in concealment until the last of July, and then went into concealment at the house of LaPierre in Montreal. What was that for? All those who had been arrested on the charge of being engaged in this conspiracy had been tried, and had had their sentence put in execution. He had been where he could know what was going on, and had been visited by his friends. He had written this letter to Atzerodt in the month of May, while the trial was progressing. He knew where his mother was, where all were; and he, an innocent man, lies there concealed in these disguises. But the counsel said to you the other day, "Why, gentlemen, if you were ad-

vertised for would you not have concealed yourselves?" I put the question to you: "If any one of you should happen to be in Canada, and you should see in the newspapers a reward offered for your apprehension as a murderer, or a plotter to murder some man, would you, if you were innocent, be concealed? The counsel asks, would you not be? My answer is, would you be? Would not the earliest train that would hasten you to this city bring you here? Would not every honest man, without one moment's delay, go before the authorities and say, "Here I am. You charge me with a crime. I am innocent of it; I am not the accursed fugitive on whom the Almighty has passed sentence for blood and fleeing away. I am innocent of the crime charged."

Mr. Merrick. I do not want you to misunderstand my remark. I agree with you entirely that that would be the course of a man under ordinary circumstances, when the country is in a peaceful condition, the law being duly administered; but I say that at that time, in the then condition of the country, any man would have acted as he did.

Mr. Pierrepont. I care not which way it is. I will take you back, gentlemen, to between the 18th of April and the 16th of September, 1865, when the prisoner lay there concealed. Tell me, is there a man of you who, if you had seen your name gazetted in the papers, and a reward offered for your apprehension as an assassin of the President, would have remained there concealed one moment? Would you not have hastened to the city with all the speed you could and said, "Here I am, the innocent and the bold. I am innocent, and I call upon you to show that I am guilty." The first thing you would do would be to bring yourself back here and show to the world that your flight had not proved that you were a criminal. Suppose that your son were there concealed, and you believed him innocent, would you not take the earliest train, if the telegraph did not bring him, and go there and say, "My son, are you innocent?" And if your son answered, "I am innocent," how long would you wait there before you took your son and came back to the city and said to the au-

thorities, "Here is my son; show that he is guilty!" Believing and knowing that he was innocent, would you not do that? I take the gentleman's own suggestion, and I put it to you as men of truth, honor, and integrity, and your answers will all be one, and the entire world will echo, "Yes; we would come back with all speed, if innocent, and surrender ourselves up to the investigation."

Instead of that, in this case there is concealment. Instead of that, in the month of May, when the conspiracy trials were progressing, this letter to Atzerodt is written, saying he is not in a hurry to come back to Washington. Time passes on until September. Surely then the excitement is all over. There is no further trouble here. Peace has been restored. The passions of the hour have been made quiet. Why does he not come back? Why does he go aboard the Peruvian under disguises? Why land in Ireland as he did? Why wander about in the darkness and secreted ways of Liverpool? Why flee to Rome? Why go to a strange country, where he could not understand their language, and join the Papal Zouaves, where he was necessarily a pauper and a slave, where he had no sympathy—away from his home, his friends, his country, his all? Why, when surrendered, run the risk of his life, flee to Malta, and from Malta to Egypt? Why all this, if he was an innocent man? Answer me that? You know he was not innocent, that he was guilty; and God said he should be a fugitive for the blood he had aided in spilling, and a fugitive he was.

Now, we will go on a little further with Boucher's testimony. Boucher ought to have been wiser, and, like LaPierre, have kept away. I hear, however, since I have been speaking, that LaPierre has received punishment from the Church for the part he took in the concealment of this man.

"Had he any disguises of any kind when he was on the boat?" "I did not see any except his hair, which was dyed." "Was his moustache dyed?" "Do not recollect whether he had a moustache or not." "Did he wear spectacles?" "Yes, sir."

Boucher goes on and tells us a little about himself. It was somewhat interesting to know what kind of a man this was

that was concealing a person under these false names, whom he knew to be charged as one of the assassins of the President, when every honorable rebel, when every pagan and every heathen that heard of it, and every religion, were sending expressions of condemnation and letters of condolence to the Government. What does he say?

"Last summer passed through Portland; was at a watering place close by, Old Orchard Beach; stayed there about a week; was there with two of the priests, Father Beauregard and Father Hevey." "Did you state there that you were his son? Father Beauregard's son?" "That is rather a hard question."

Why was it a hard question? What was there hard about it? The simple question was, "Did you state when you were there at that time that you were Father Beauregard's son? He is a holy priest, in the holy vestments of the Church, and the learned counsel called him Father Boucher. "That is is rather a hard question," he says, Well, it was very hard for him to say that he did, because that was the fact. The next question is, "Did you state at this house that you were his son?" "I do not remember," he answers. I should never confess to that priest, and I do not believe many people ever will. There is something wrong about that priest. You may rest assured that he will not long be a reproach to the Church. All churches have bad men in them, but they finally get rid of them, and the Church will get rid of this man.

Let us read further:

"Did not register my real name; I registered as Jury."

"Why did he do that?"

"Went dressed as I am now; not with the ordinary ecclesiastical suit we wear in Canada—not with the cassock. There is a little difference between the dress in the two countries, and Portland is in the United States. I have never been in Canada. My question was simply as to whether at this watering place you did wear the Canadian priest's dress? No, sir."

Could he not have told me that before without all that trouble?

"I entered a false name on the register. They took me for a lawyer. Did not disabuse their minds of that. I thought that was honorable enough."

Suppose, when I get through with this trial, I should go to Canada, and when I got there should dress myself in a priest's dress and pass myself off as Father so-and-so—let it be understood that I was a priest—and then when I got back here that fact should be disclosed, and when questioned about it, I should say, in explanation, "I thought the character of a priest was honorable enough." If I threw off my character as a lawyer, disguised by name, disguised myself, played false to what I am, and pretended to be a priest, what would you think about it? You would naturally suspect that there was some great hidden motive to do such a disgraceful thing. If I understand the rule of the Catholic Church, it is that the priest shall not put off his dress, shall not take an assumed name, but shall always appear as the holy father which he professes to be, prepared at all times to hear the confessions of the sinner, to bind up the broken heart, to administer the consolations of religion, and claim that he is a holy father, and not that he is a worldly lawyer. I say again the Church will take care of this man. That you can be sure of.

I now come to near the close of what I have to read, to the statement of Dr. McMillan. People who are not familiar with the history of trials are apt to suppose that there is something singular in the confessions which criminals make. Criminals always make them. It is the history of all crime that the crime is confessed. It is sometimes confessed by flight, sometimes by suicide, sometimes by words, often by flight and words, but it will always in some shape be confessed, generally by words.

"About a week or ten days previous, I had met in Montreal a priest. I was going on the 15th of September to join my ship. On the steamer Montreal I met this Mr. LaPierre again by agreement. He said to me that he would give me an introduction to his friend. He brought me up to a state room, of which he had the key. He unlocked the door, and in the room I found the prisoner at the bar; the first time I had seen him."

I want you to note that this was the 16th day of September, 1865, a little more than five months after this murder.

"He introduced the prisoner to me under the name of McCarty, the friend to whom he had referred before. I never suspected who the gentleman was, and consequently I passed the evening and most of the night with him and a third party besides the priest. His hair was then short; its color a dark brown; did not perceive that night that it was dyed; afterwards found it out. LaPierre came all the way down to Quebec. We had breakfast on board the steamer in the morning, probably at seven or eight o'clock. Between nine and ten the company sent a tug to take the passengers and their luggage on board the steamer Peruvian. We all went on board. After we arrived on board LaPierre says to me he wished me to let the prisoner remain in my room until the steamer had left. I did so; I got the key of my room, let him in, and went with him. LaPierre went back on shore that night; may have seen prisoner in my room, but do not recollect; remember that while there, after lunch or after dinner (lunch was at twelve and dinner at four), the prisoner came to me, and, pointing to one of the passengers, asked me if I knew who the gentleman was. I told him I did not; that I supposed he was a passenger, as he was himself; that that was all I knew about the man. He then said he thought the man was an American detective, and that he thought he was after himself. I said I did not believe anything of the kind, and that I did not see why he should be afraid of an American detective. I said to him, 'What have you done that you should be afraid of an American detective?' He said that he had done more than I was aware of, and that very likely, if I knew, it would make me stare, or something to that effect. I said that he need not be afraid of an American detective; that he was on board a British ship, in British waters; and that, if an American detective had been after him, he would have tried to arrest him before he left port. He said that he did not care whether he was or not; that if he tried to arrest him this would settle him—and in saying that, he put his hand into his waistcoat pocket, and drew a small four-barrelled revolver. On the tug from the steamer Montreal to the steamer Peruvian; believe he knew nobody else on board. There was among the passengers William Cornell Jewett, otherwise known as Colorado. There was also a colored man, who had been in the service of Jefferson Davis; saw Beverly Tucker on that day; met him on the tug going from the steamer Montreal to the steamer Peruvian; went on the Peruvian, but not to cross; the prisoner went by the name of McCarty. After I got on board the steamer I perceived that his hair had been dyed. He wore a pair of spectacles; do not remember that he said anything about his hair. I remember his saying that he did not wear spectacles because he was short-sighted, but because they aided in disguising him a little. I had conversations with him every day from the 16th until we arrived at Londonderry; that was about nine days; remem-

ber his saying to me that he had been in the habit, for some time during the rebellion, of going to Richmond with dispatches, and bringing dispatches back to this city, and also to Montreal. I remember his stating that he at one time was told in Montreal that he would meet a lady in New York. That he met the woman in New York; he came on to Washington with her; from Washington he started on the way to Richmond with her and four or five others; that after a great deal of trouble they managed to cross the Potomac; that after they got south of Fredericksburg they were driven on a platform car, drawn or pushed by negroes. As they were drawn along they saw some men coming toward them—five or six, if I recollect right. They ascertained that these men were Union prisoners, or Union soldiers escaped from southern prisons; they were, he said, nearly starved to death; that this woman who was with them said, 'Let's shoot the damned Yankee soldiers.' She had hardly said the word when they all drew their revolvers and shot them, and went right along, paying no more attention to them." "Was the name Mrs. Slater?" "Sounds like it, but I would not be positive that it is. The woman's name was very conspicuous in Montreal during the trial of the St. Albans raiders. I understood him to say they were in a very miserable way; that they had been obliged to hide themselves in swamps and other places, and I understood him to say they were almost dead. He told me he had received money in Richmond from the Secretary of State (Benjamin) several times; remember two amounts, thirty thousand dollars and seventy thousand dollars. I do not remember at what times he received them; he stated particular times. I remember these amounts."

I read to you yesterday in the Lon letter about "Jake having the funds." Who Jake is I do not know. I presume it is the same Jake to whom these funds went; but that I do not know.

"The last day he was on board, which was Sunday afternoon. After tea he came to me on the quarter deck and said he wished to speak to me. I went with him behind the wheel house. He repeated to me many things he had already said before, parts of which I have stated here, and the others I do not recollect. After talking a long time in this way, he said, pointing to the coast of Ireland, in sight of which we were then sailing, 'Here is a foreign land at last.' Then, said he, 'I hope I shall be able to return to my country in two years. I hope to God,' at the same time holding a revolver in his hand, 'I shall live to see the time when I can serve Andrew Johnson as Abraham Lincoln has been served.' One day, in talking of the mere possibility of his being arrested in England, he said he would shoot the first officer who would lay his hands on him. I remarked that if he did so he would be shown very little leniency in England. Said he, 'I know it, and for that very reason I would do it, because I would rather be hung by an English hangman than by

a Yankee one, for I know very well that if I go back to the United States I shall swing.' He said at the beginning of the week during which the assassination took place, that he was in Montreal; that he had arrived there within a few days from Richmond with dispatches. He said they were important dispatches for Montreal, which had been intrusted to him in Richmond. What they were I have no knowledge at all. He told me that he was there at the beginning of the week of the assassination, that he received a letter from John Wilkes Booth, dated 'New York,' ordering him immediately to Washington, as it had been necessary to change their plans and act promptly; that he started immediately on the receipt of the letter. The first place he named was Elmira, in the State of New York; told me that he telegraphed to John Wilkes Booth in New York; that an answer came back that John Wilkes Booth had already started for Washington. He said that he arrived at St. Albans one morning a few days after the assassination. He said that the train was delayed."

Just the same evidence that we have given you from these other witnesses.

"He said that the train was delayed there some time, and that he took advantage of it to go into the village to get his breakfast; that while sitting at the public table with several other persons he saw that there was a great deal of talking and excitement among those who were at the same table with him. He asked his neighbor what the talk was about. His neighbor said to him, 'Why, don't you know that Mr. Lincoln has been assassinated!' The prisoner replied, 'Oh, the story is too good to be true.' The man whom he addressed then handed him a newspaper. He opened the paper, and said that among the names of the assassins he saw his own; that it so unnerved him at the moment that he dropped the paper in his seat, and that was the last of his breakfast for that day. He said he got up from the breakfast table, walked into another room, and just as he was about passing from the room he heard a party rushing in, stating that Surratt must have passed, or must then be in St. Albans, as so-and-so had found his pocket handkerchief in the street with his name on it. He said that at the moment, without thinking, he clapped his hands on a courier bag, in the outside pocket of which he was always in the habit of carrying his pocket handkerchief, and found out that he had really lost his pocket handkerchief. He said that then he thought it was time for him to make himself scarce; understood him to say that he made for Canada as soon as possible to one Mr. Porterfield, in Montreal, a Confederate agent; said he stayed there a short time; how long I could not say; until, however, they found out that detectives were beginning to suspect that he was in that house, and it was found necessary for him to leave there. He said that one evening two carriages were driven in front of Mr. Porterfield's house, and that he and another

party, dressed nearly as he was, came out at the same time, and got one into one carriage and the other in the other, and drove off, one carriage driving one way and the other in the other; remember his telling me that he wore at that time—I cannot tell whether he had on the same dress that night—what is known in Canada as an Oxford jacket; believe it is what is called in this country a Garibaldi jacket. Understood him to say that he stayed there some two or three weeks in the house of a priest named Charles Boucher. In describing the place, he said that between the bedroom and the sitting-room there was a hole cut in the partition to put a stove in; that under the stove there was a vacant space about six or eight inches high; that one day while the priest was absent he was lying on the sofa in his bedroom, when one of the female servants, desiring to know who was in the priest's house, put her head under the stove so as to see in the room. He saw her face as it came under the stove, and kind of scared her away by jumping suddenly at her. The story was immediately circulated around the village that the priest had a woman in his bedroom hiding. Then the priest told him that he could not keep him any longer; that he must find other quarters. He then came back to Montreal to the man who introduced him to the priest. He told me that for four months and a half or so he was secreted in a dark room, from which he never came out except a few times, when he would go out late at night and take a walk."

I now come down to just before his arrival in Europe:

"His general conduct was gentle. He would, however, show signs of nervousness whenever any one came suddenly behind him. He would turn round and look about as if he expected some one to come upon him at any moment. I had left the prisoner after the conversation that I related yesterday; I should say it was about half-past nine o'clock when I left him. About half-past eleven or twelve o'clock I was called out of the room of one of my brother officers by one of my stewards, who stated that a passenger wanted to see me outside. I came out, and found the prisoner standing in what is called on steamers or ships after-square. He was already dressed ready to go ashore. He had previously told me that he had intended to come down with us to Liverpool.

"He asked me what I would advise him to do—to land in Ireland, or come down to Liverpool and land there. I told him I would give him no advice whatever; that he might just do what he pleased and land where he pleased. He then said, 'Well, I believe I will go down to Liverpool with you.' I was a little surprised, therefore, when I came into the after-square and saw him all ready to leave. I said, 'Halloo! are you going ashore? I thought you were coming down to Liverpool.' He says, 'I have thought over the matter, and I believe it is better for me to get out of here. It is now dark, and there is less chance of being seen.' Says I, 'You have been telling me a great many things about what you have done and seen, and I believe the name under which you travel is not your real name.

Will you please give me your own name?' He looked about to see if there was any one near, and then whispered in my ear, 'My name is Surratt.' He went ashore within twenty or twenty-five minutes. He then asked me if he could get some liquor to drink; that the bar was closed, and he wished to have something to drink before going ashore. I told him that I would see the barkeeper, and I had no doubt he could get some. I called the barkeeper, and he came and opened the barroom, and the three of us went in—the prisoner, the barkeeper, and myself. He was nervous; he seemed to be very much excited. He called for some brandy, and the three of us each had a glass. In England and on board ship it is the habit to help anyone with the liquor they may want. They never place the decanter before you and tell you to help yourself; but in this instance the barkeeper placed the bottle on the table and told us to help ourselves. The prisoner took the bottle, and poured out a large half-tumbler full of raw brandy. In a few minutes I asked him if he would not drink with me. He said, 'Yes,' and we took another, about the same. Within a few minutes afterwards again the barkeeper says, 'It is my turn to treat now,' and asked us to take a third glass, and we did so; saw he was becoming rather the worse for his drinking. By that time we had arrived at the place where the mails and passengers are taken off from the steamships. I saw the condition in which the prisoner was, and I told the chief officer at the navy yard it was dark, and I was afraid that the prisoner might fall overboard. I said to the chief officer at the gangway, 'Will you mind to take this officer by the arm and lead him down?' He did so. Was induced to make this affidavit as soon as I landed because I thought the prisoner was guilty of a crime, not only against society, but against civilization. I thought it was my duty as a man to go and give him up to the proper authorities."

Was it not his duty as a man? Would not you say it would be your duty, and anybody's duty, as a man?

Now, gentlemen, we have already passed him from Liverpool to Rome, from Rome, where he met his old acquaintance, where he was given up, and from where he escaped to Malta, and from Malta to Egypt, the place of his final capture. From there he was brought over the sea to this city, indicted, and brought before you. The wonder of his flight, the strangeness of his concealment, the fact that he had passed almost over the world for the purpose of escape, show that there is no hiding-place for such a crime. And now, in the providence of God, he is brought before you, and you twelve are selected to say whether it is a crime, or whether it is all right. If he is not guilty, he is innocent. If he is innocent,

the things in which he was engaged are right, and you will say they are right. If you say he is innocent, then you say all right.

I am now nearly done. Before finishing I pass to the *alibi*. I read to you the law on that subject, and the counsel for the prisoner yielded to the truth of my statement of the law. The law is that where witnesses have sworn to the presence of the accused in a particular place, in order to make an *alibi*, of any legal avail, it must be such an *alibi* as will show positively that there can be no doubt about its truth, because it is an easy thing to fix up; it is an easy thing to have the circumstances true and the dates different. It is the easiest defense that can be made in the world; and, if the *alibi* is true, it can always be proved without a question. The *alibi* in this case is the weakest one, I undertake to say, that was ever introduced into a court of justice for a defense. Indeed, with the reading I have had, I never saw one that approached it in its faintness, in its weakness, and in its impossibility. It is not possible for it to be true; and yet the witnesses, with one exception, may have all told what, on the whole, they thought was true. In the case of Dr. Webster, as I said before, when treating of the law, a number of the most respectable witnesses testified to an *alibi* to that degree, that many who read the evidence, and I among others, believed that Littlefield was probably the murderer instead of Webster; and yet it turned out that those witnesses were all mistaken—not mistaken in fact that they did see him, but mistaken as to the time at which they saw him.

Now, gentlemen, we will come to the *alibi*, and we will take up the witness Carroll, who says he saw him at Elmira. I think you will remember Carroll. Surratt was in Elmira on the 13th. There is not any doubt about that; and he came in that special train of the 13th. Two witnesses whom we have produced on the stand saw him there, and one took him across the ferry at that time. All the mistake has grown out of that. Now, let us see what Mr. Carroll, their witness on this subject, says about it; and I have no disposition to

find any other fault with him than that he did not seem to deal very frankly:

"State if you can find the date with any degree of certainty?" "The first time was the 13th. He came in on the 14th also. I fix those two days by our petit cash book."

He does not pretend that he has any memory about it, as you see at once:

"What fact is there in the cash book that enables you to fix the date?" Mr. Ufford, the proprietor of the house, went to New York on the night of the 12th." "When did he get back?" "He returned on the morning of the 15th." "Do you fit it by that?" "Yes, sir."

Mr. Carroll thinks he saw him between the 12th and 15th. I have no doubt he did. I turn now to his testimony:

"Did you tell Mr. Ufford that it was on the 12th or 13th?" "It may be."

I hope you can recall that witnesses' manner and his whole appearance, because it throws a little light upon the testimony in this case. The trial has been so long that you may have forgotten some of the witnesses' faces.

"It may be, but I know very well from our books what the dates were." "Didn't you tell Mr. Ufford that it was on the 13th, and that you knew it from the fact of the time the partner of the house was absent?" "I do not know that I remember distinctly."

And will you note here that he had never seen the man before in his life, and never saw him again until he came here.

"What date did you tell the deputy marshal, Mr. Covell, he was in your store?" "After consulting the books I could not have told him other than are mentioned there." "Did you tell him the date?" "I do not know; but, if I did, I could not have told him any other date than that in the books."

Which was between the 12th and 15th. That was true. There was no falsehood in that. He was there between the 12th and 15th.

"Did you tell him anything about it?" "Oh, he spoke to me about it, saying that I had said to Mr. Knapp that it was on the 12th." "What did you tell him?" "I could not have fixed any date other than that on our books."

IX. AMERICAN STATE TRIALS.

Sticking to the books, that it was between the 12th and 15th. That was true. He found on the cash book that between the 12th and 15th the chief of the house was absent, and that enabled him to fix that it was on some of those days.

"Did you tell him inaccurately?" "Do not distinctly remember." "Did you tell him that it was on the 13th?" "I know the first time was on the afternoon of the 13th."

If it was on the afternoon of the 13th, he has knocked that physical impossibility all dead. That physical impossibility could only bring him there at eight o'clock at night. It is too bad to have it destroyed in that way. But I read on:

"Did you tell either of these gentlemen that he came in on the 14th?" "If I told them anything at all, I said the 13th or 14th."

That is just what he did say, and he did see him there on the 13th. Now let us go further and see what he says:

"What did you state to Mr. Knapp about the date when you saw that man who you thought might be the prisoner? When did you tell him you saw him?" "I think I told him the 13th and 14th of April." "Did you tell him you saw him the 14th?" "I think I did." "Cannot you remember whether you did or not?" "I think I did; there were so many questions asked and so many persons interested about that time that I may be mistaken."

Well, he is mistaken. He says he might have been mistaken.

"Cannot you tell whether you said you saw him on the 14th?" "I think I said the 13th and 14th." "Do not you think you told him the 12th and 13th?" "I do not think I did." "What do you say about that?" "I do not remember."

That does not prove a very good *alibi* for the 14th, does it? We will come down a little further:

"Are you particular in your memory about it? Can you remember what you told him?" "I do not remember telling him 12th and 13th." "Did you tell him it was the 12th?" "I do not remember that I did." "Did you tell him it was the 13th?" "From the time I got the date I could not have told him otherwise." "Do you remember you told him it was the 14th at all?" "If my memory serves me, I think I did."

That is all the testimony that this witness gives. I have read to you fairly. He goes on:

"I did not tell Mr. Covell it was the 12th. I told him it was the 13th and 14th." "That is the best of your recollection?" "I have no doubt that I told him that. Mr. Covell said to me that Mr. Knapp had said it was the 12th and 13th; I told him I had no recollection of it; that the only way I fixed the date was the date of entries in our petty cash book. It shows that one of the proprietors of the store left in the afternoon of the 12th and returned on the 15th." "Did you tell Major Field you saw him on the 12th or 13th?" "Do not remember whether I did or not." "Did you tell Major Field it was the 14th?" "In all probability."

That I believe is the strongest witness on the subject of the *alibi*.

I now come to the next witness, Mr. Stewart:

"Do you recollect a gentleman coming in that day to speak about getting a suit of clothes there, who had on anything peculiar in the way of dress?" "On the 13th or 14th of April I do." "Which?" "I cannot say which, but one or the other." "How long did that person remain in the store?" "I should say I saw him twice."

Very likely he did. I do not know how that was. He says he cannot say whether it was on the 13th or 14th. I now turn to his cross-examination:

"Will you tell us what day of the month it was?" "It was either the 13th or the 14th." "Which?" "I cannot tell which."

He says it was the 13th or 14th; he cannot tell which; and that is all he says in relation to the time. He fixes it no more definitely than that.

The next witness is Mr. Atkinson:

"Do you recollect of a gentleman coming into that store on the 13th or 14th of April with any peculiar dress?" "I do." "Have you any means of fixing the date?" "The only means I have of knowing the date is this fact—that it was the time when one of our house was in New York, buying goods. I made an entry in the cash book, showing when he took money to go to New York, and when he got back from New York and settled his accounts. The date of his leaving is the 12th of April, 1865." "The date of his return?" "The 15th of April, 1865."

I now read from his cross-examination:

"From that (the cash book) you know when he left and when he got back?" "Yes, sir." "When did he leave?" "He left on the evening train of the 12th." "When did he get back?" "He got back on the morning of the 15th." "When was it you saw the man with the peculiar dress in your place?" "I could not state. It was either the 13th or 14th." "Which?" "I could not say."

I surely cannot find fault with such witnesses as those. They did not know. Between the 12th and 15th sometime they saw this man with the peculiar dress. They cannot tell which day it was, but it was on one of the days that this man was absent in New York, between the 12th and 15th, and they swear they cannot tell you whether it was the 13th or the 14th. They saw him on the 13th. I have no censure to cast upon them, no reproach to make. I believe they testified honestly. They did not know, and they told you they did not know.

I turn now to the testimony of Cass:

"Got the first news of the assassination at home, in the morning paper, the Elmira Advertiser, between seven and seven and a half in the morning after the assassination."

"He had a goatee, which came from about the side of the lips round; rather short. Had not a moustache, the same as he has now; the goatee was rather a dark brown. My impression is that it was rather darker than it is now; do not think it was an unnatural color."

Then he saw him there with his hair in the natural color when he saw him. He thinks it was on the 15th, but he says, "I do not remember the day."

I come now to Dr. Bissell; and here, gentlemen, I have to confess that we have something to meet. Up to this time on the *alibi* we have not had anything whatever to meet; but his testimony is something that we have got to get over in some way. The counsel for the defense got over it by saying nothing about it. At one time they talked of withdrawing it, but finally they got another doctor, who had had consultations with Bissell when he was keeping his drinking shop, who stated that one patient lived and some did not, to sus-

tain his character, and then they did not withdraw him. The counsel showed a great deal of indignation because I asked whether that patient over whom they had had the consultation lived, and he seemed to think that it was throwing some reproach on the doctor, who kept the beer shop, or else on the other doctor, I do not know which, probably on the other doctor. This Dr. Bissell certainly says, and he says it positively, that he saw the prisoner in Elmira on the 14th. As he is the only witness who testifies with any positiveness about it, I must look at his testimony a little, because I cannot get over the fact that he tells us he saw the man there, and the prisoner is the man, and he told Mr. Bradley it was the moment he saw him in the prison. Now let us take up the testimony of this Dr. Bissell, my neighbor of New York, a distinguished physician. I do not wonder that my friends on the other side did not touch him much.

"State whether you were on crutches at that time? I was on crutches at that time. I stopped at a little house. I cannot recall the name. Names are the worst things for me to remember in the world. I can remember faces."

That is what he came for, not to remember anything else, as you will see he did not remember anything else before I get much further.

"You did not stay at the Brainard House? I did not. I stopped at a little house on the street that runs from the east end of the depot, south or southwest, on the south side of the street, where I had been in the habit of stopping. It was so near morning that I went up and lay down on a lounge, in the sitting room or parlor, until breakfast time. I eat my breakfast, and went out in quest of this man. I ascertained that he was not in Elmira. While out I went to a third party whom I had been directed to by letter from the town of Deposit, I think, to find him. After going and doing my business, I called at the Brainard House. I thought I would take a 'bus to the depot and take the train back to Owego. As I went in he passed me. I noticed his dress as he passed me. I went into the reading room or office there and sat down. He came in from the barroom or office or reading room to the room I was in. He passed up and down, and kept looking at me. He wanted to know if I had been to the war. I didn't give him any satisfaction. I did not have a great deal of conversation with him. I wished to avoid it myself. Referring to my lameness, he asked if I had been

IX. AMERICAN STATE TRIALS.

to the war. I merely spoke with him to see if my suspicions were correct; to satisfy myself; to see if he would attempt to draw me out, or anything of the kind. I wanted to satisfy myself whether he was a spotter of the Erie Railroad Company."

This doctor tells you he was there hunting up witnesses for his case, for his lawyer and patient Mr. Wetmore, whom we afterwards had on the stand. I now read from his cross-examination:

"When did you first tell these gentlemen what you knew—when did you first come here? I came here this morning."

If he had been here a day I do not think he would have been examined.

"When did you first have notice you were wanted? Yesterday afternoon. How did you know they knew anything about it. I do not know. I have asked Mr. Bradley how it was. He will not give me any satisfactory answer."

Mr. Bradley was very close with him.

"He said he had been looking for sometime for a man on crutches."
"Then you could not find out. I could not. I suspected."

When he came in he did not have any crutches, I believe, but when he went out he needed some very badly—he was so stiff. Finding him so positive and fixed in this matter, I very naturally asked him some questions. He came on with much parade, as you remember, as a doctor. That being the case, I thought I would find out about his patients, and he told us that Mr. Wetmore was one of them—a lawyer whom I happened to know in New York, and whom we had here on the stand, and who told you there was no truth in the statement. Dr. Bissell was his client in an Erie railroad matter, but he was not a patient of the doctor's.

I asked him:

"Have you any other patients in New York? I am not doing a large amount of practice; I do a little office practice, and I have some outside business which I am connected with now. I am engaged in developing some patent rights about doctoring."

I had not the remotest notion of what he was coming at.

"They are disinfectants, and may be termed hygienic. We are developing it; getting it ready to get it upon the market. We have got one patent upon the market; a patent chamber-pot."

I now turn to where he tells a little more about himself. Surely no man can ever complain if you only read what he says of himself:

"I made that a secondary matter—the business of a physician. I have been in the habit of speculating, more or less, in one thing or another—in anything at which I could make a dollar legitimately. When I was keeping a restaurant and drinking place did not have my name up as a doctor. Never pretended to go behind the bar; do not think I ever set out a glass of liquor for anyone. Doctoring is not exactly in my line."

He tells us a little more about himself when he went up to Elmira:

"I took the night train from New York. It is my impression, about two o'clock. Owego is thirty-six miles from Elmira. When I got there I laid upon a lounge in the parlor, with a buffalo skin over me."

He told us the distance was thirty-six miles, and he left Owego about two o'clock a. m., and got to Elmira before daylight in the morning. We called Mr. Guppy, who ran the trains, and he told us there was not any such train at all. By turning to page 831 the counsel will find that Mr. Guppy states there was no such train, and the train that came in came in there at 6:12. There was not any truth in this story, and you remember that when I went on to examine Bissell as to where he went about the Brainard House, how it looked, and how its rooms were, he knew not one thing about it; but he told the falsehood of going to a house which was then locked and closed.

"I am not positive, but think they had a register. Did not register my name. When I got there the man was starting a fire in the barroom and I went in. I knew him."

And yet he could not give his name. He says he had been to the house three or four times, but he could not give us the

house; he could not give us a room in the Brainard House, where he went and where he saw Surratt; he could not give us one physical substance that was in that house—telegraph office, billiard table, reading room, or anything whatever.

"Won't you tell us when the Erie train reached there that day? Think it was a little before daylight in the morning."

We have proved by the train master that there was no truth in that. I asked him about this house. I tried to make him draw the rooms. He said he could not draw. He declined to do that. I then asked him:

"Were you crossing the street? I was upon the sidewalk, upon the same side as the house. Did you go up steps to get in? I do not know whether there is one step, two steps, or three steps. Were there stone steps? I could not say. Was the sill stone or wood? I could not say, I paid no attention to it. Was there a platform upon the side made of wood or stone? I could not say. When you got in, what was on your right hand, left hand, or in front? I do not know. Was it a double house or a single one? I do not know. Was there a reading room on the right hand or left hand? I cannot say. Was it the first or second story you went into? I think it was on the first. Were there any newspapers? I do not know. Was there a library? I do not know. Was there a settee? I think I sat upon a settee. Were there chairs in the room? Either settees or chairs, I cannot tell which. Did you see a billiard table in there? I do not recollect seeing one. Did you see a telegraphic machine there? I have no recollection. Was there a carpet or table in the dining room? I do not know. Was there a man in it? Yes, sir. Tell us who the man was? That man (pointing to the prisoner) came in there, and there were three or four others. Was the room papered? I cannot say. Can you tell what color it was? I cannot distinguish colors. I can tell white from black; but when you come down to these fancy colors, I cannot tell anything about them."

But he could tell a fancy tale, every word of it fancy; for I am going to show from the most positive evidence that there was not a word of truth in it. He was not in the place.

"I got up and left, and went to Haight's Hotel. When you got up and left, did he get up? I do not think he did. Did you ever see him any more? Never again until I saw him today. When I got to Haight's Hotel, what I did I cannot say; saw some people in and about there; who they were I do not know; am not acquainted with many people in Elmira. When I saw prisoner I recognized him the moment the door was opened."

That man on crutches never had the least sort of difficulty about it.

"Where was it? In the jail. He was not dressed at all then. Was he dressed as he is now, or dressed in some different costume? He was in a different costume. Why then do you say he was not dressed at all? If I see you with a sack or a dressing gown on, I would not call you dressed."

I do not know why. Perhaps the doctor does.

"Was he dressed in the jail in the same way that you saw him dressed at the Brainard House? Partially, but in a different colored suit. It had a belt that fastened around him; but it was of a little different style. There was a difference about the neck, and there was a difference in the plaiting."

I do not think it required a great expert to tell what sort of a witness he was up to this point.

"As quick as the door was opened I remarked to Mr. Bradley that he was the man; that I did not want to see anything further of him. I described him to Mr. Bradley and told him that I did not want to go to the jail to see him."

Pretty quick that was.

"I first got the telegram yesterday, a little past one o'clock; was surprised that I should have a telegram come here; could not imagine who had informed of what I had said regarding it. I was not positive as to the man. I said it answered the description of the man I saw, and if I could see that man I could tell. I ask you if you did not think it would be of great importance to the defense if you had seen him in Elmira? No; I did not think anything material about that."

What do you think of a man talking in that style, who comes here and tells you, when this man was on trial for his life, and his counsel was attempting to prove an *alibi*, he did not think it was of the slightest consequence that he could prove that he was in Elmira on the day of the murder.

"You did not think it would be? I paid no attention to it. I merely came to the conclusion that I was not coming. What made you conclude that you were not coming? I did not want to have my name mixed up in the matter one way or the other."

He was very careful about his name.

"Somebody came to see me. He said: If you do not go I shall proceed to Washington immediately and lay your statement before his counsel, and the only effect will be to delay the court until a subpoena can be gotten out and served upon you here. It was Mr. James W. McCullough."

I now turn to the testimony of Mr. Wetmore. Dr. Bissell says Mr. Wetmore was his lawyer, as he was:

"How long have you known him? Since 1863. Has he ever been your physician? Never. Have you any letters or memoranda with you that you brought from New York that tend to fix dates? I have some letters, or had some, which I handed to General Foster. Were they letters that you wrote? Yes, sir. You can tell the jury whether on the 14th of April Dr. Bissell was in Elmira hunting up witnesses for this suit."

You remember that he stated he had a suit with the Erie railroad, and he pretended he was up there hunting up witnesses for this suit.

"I think not. Why? My reason is, that on yesterday (having been subpoenaed the night before) I went to the office of Mr. Eaton, who was the counsel opposed to me in that case. After some conversation Mr. Eaton presented to me these letters, which I wrote to him on the 11th, 12th, and 13th of April, 1865, and also 26th and 27th. They do not exactly refresh my memory, but they confirm me in my impressions that during this time Dr. Bissell was in my office, and also of the fact that Mr. Eaton came there to see him."

They were documents that we could not put in evidence, but they were the letters that were here before him, and they were from his own lawyer. Mr. Eaton was the counsel for the Erie railroad.

"I cannot fix the date that Mr. Eaton was there. On the 11th, 12th, and 13th of April, 1865, I wrote to Mr. Eaton, and he presented those letters to me and which confirmed me in the impression that Dr. Bissell was at that time in my office, and endeavoring to settle the Erie railroad suit."

Now let us see what he says about Dr. Bissell's character for truth:

"I have heard the character of Dr. Bissell very much canvassed. I must say that his general reputation was bad; very bad."

And, as you observed, from the different places where that man had lived, there came pouring in witness after witness, whom we put upon the stand, who gave him the most blasted reputation that I ever heard given to any man in a court of justice; and voluntarily did they come. Now, in the course of the examination of Dr. Bissell this occurred.

"Mr. Pierrepont. Won't you turn a look toward the jury?

"Mr. Bradley. And let them see your face.

"Mr. Pierrepont. The counsel is right; I want them to see his face; we both agree."

And he turned his face towards you. I think you remember his face. I think you will not readily forget it. The reason he could not give any answers to my questions on the cross-examination was that he was not in Elmira at that time. I doubt whether he had ever been in Elmira. He could not give a description of the house in which he stayed, nor could he tell the name of its keeper, or whether he entered his name on the register. I do not believe he ever saw the place. It is certain that he did not go by the train in which he swore he went. It is equally certain that he was not there for the purpose of getting witnesses in a suit which he was then arranging to have settled, and that he was in the office of his counsel, Mr. Wetmore, with Mr. Eaton, the counsel of the Erie railroad, at the time. To my mind, nothing could be more clear than the expression of his face when he was on the stand talking. If you were as familiar with witnesses as I, you would see it as plain, and I think you did see it as plain. I was very anxious, as this record shows, that he should turn his face toward you, for I could see through his dull and horny eyes lies generating perjury in his brain as flies are generated within a rotten carcass, and then a slow stream of slimy larvae druded from his loathesome mouth, requiring more than all his patent pots and patent disinfectants to cleanse the air of the perjured and polluting odor. There was not a word of truth in anything that he said.

Gentlemen, I am now through. I had no expectation of keeping you so long. I did not know that what I had to say

would spread over so much ground. I cannot express to you my feeling of gratitude for your kind attention. I have never before seen men listening so long and so well. I know you have been listening for the purpose of trying to get at the truth in this case. That is what I have endeavored to aid you in reaching; and with the aid of the court and of your own consciences, I know you will reach it. This is a matter affecting us all, affecting our future, affecting the stability of this institution of the punishment of crime by the civil law in a tribunal where twelve men sit. As I have said, without it there is no liberty. You may pass into military power and have all crimes there tried, and liberty bids you farewell; it lasts but a little time. It depends on jurymen and on courts whether it shall live or die. Liberty will not live without justice. It is that which keeps it alive. With injustice it cannot live. With rapine and murder and crime unpunished, neither you nor I, nor any son or child of ours, has any protection whatever in the community. The Government is for the protection of us all. It is not for the sake of vengeance and of blood. It is for the protection of society.

I have endeavored, in bringing before you this case, to bring nothing before you that was not true, and to urge nothing upon you except those great principles which lie at the base of our free institutions, and upon the sanctity and the preservation of which it is absolutely certain our liberties depend. We have passed through a great struggle, during which rivers of blood have been shed. Have you in your rides, while this case has been going on, passed up beyond the Soldiers' Home? If you have, you have seen a little city there. The streets of it are green. They are watered by a nation's tears. Five thousand of our young men lie buried there in that city of the dead. Go to other portions of this land, and you will find three hundred and thirty-five thousand more of our young men lying in those silent cities. Is it all for nothing? Think you from their mouldering flesh no plants will spring, no fruits will grow? And think you their spirits would not come out from their tombs if they were to

know that an assassin, a plotter, an aider and an abettor in the murder of the head of the Government, was, by your verdict, to go free, and that a jury of their countrymen were to say, "It is all right!" What did they fight for? For such liberty as that? What will the entire civilized world say? What the Pope of Rome, who hastened to deliver up the fugitive that he might be brought back to the city of his crime, when he hears that an intelligent jury of his countrymen say, "That is all right." Gentlemen, what have we been taking all this trouble for if you are to say to the fugitive who was thus concealed so long, and went through so many hardships to escape from justice, "Foolish man, why flee? There is nothing wrong in what you did; it is all right; there is no guilt in anything you have done." At such a declaration the blood in men's veins would run cold; the valves of the heart would cease to open; the very stones of the street would cry out; and there is not an honorable rebel in the land who would not utter his curse upon such an act.

Now, gentlemen, there has been a great deal said to you about our having had blood enough. The question is whether we are to stop crime. I have no thirst for blood. I would not take the life of any fellow creature if I could help it, unless it were in a magisterial way, to preserve the violated law and to prevent blood and sorrow and the ruin and destruction of my country, and then I would not hesitate. For that purpose, and for that purpose alone, would I do it; but not from any love of blood. You have nothing to do with that; I have nothing to do with that. That lies with the Executive. It is in the executive power to make whatever adjustment of any punishment for crime he may see fit. That is not our business. Our business only is to see whether the man charged with the crime is guilty. That is all we have to do; and it is left to the other powers to inflict the punishment or to modify it, as may seem to them right. I have only to say, that when the man is found guilty, honest men will say so. No honest men can say anything else.

In this case I feel justified in saying that the prisoner is

proved to be guilty, and in a more overwhelming manner than any case was ever proved in the history of jurisprudence. I appeal to any judge, any lawyer, any man who has ever had experience, if there ever was a case proved with such demonstrating facts as is the guilt of this prisoner. It is proven not only beyond a reasonable doubt, but entirely beyond the possibility of a doubt. Not a man can doubt it. It has been a strange case. It was a strange providence that brought the man back here to this city to be tried; and now that he is here, you, the twelve men who in the providence of God have been selected to try the case, are to say whether what he has done is right or not right; whether he is guilty or not guilty. That is for you to say, not for me. I know he is proved guilty. About that there can be no doubt. I do not believe any man has any doubt whatever on that subject.

Now, the counsel for the defense seem to throw much reproach upon the District Attorney and on our side because of a remark that was made that the court would not dare to do wrong. No honest man dares to do wrong. Every honest man dares to do right. Do right, and no wrong ever follows. Do wrong, and evil and misery are always sure to follow from it.

In 1843 I was in the city of Columbus, Ohio, and a man by the name of Clarke was on trial for murder. Mr. Swayne, who is now a judge of the Supreme Court, was prosecuting the case. It is reported in the Ohio reports. The defense was insanity. A great many doctors were brought to prove that he was insane; others testified that he was not insane. The jury were an honest, conscientious jury, and they were sent out. They were out all night. In the morning, when the court convened, they had not agreed. The court was silent and still. The jurymen were in a room situated precisely as that is (pointing to witness room). Soon after the court opened we heard the solemn voice of prayer. Some jurymen had doubted whether the man was not insane, and inasmuch as it was a capital offense, and they were good men and wanted to do right, they proposed that the jury should

kneel down and ask the God of light and truth to enlighten their minds; and they were in earnest prayer when the court opened. A Mr. Wilcox, a devout man; who feared God, known well to one of those judges sitting by my side (he is now gone to his home in heaven), said to me, "That jury will soon agreee." The jury arose from their bended knees; their minds were enlightened; they walked into the courtroom and said, "He is guilty."

Gentlemen, if there is a man among you who has a doubt in this case, or any number of you, and you will take that test, it is all I ask. If, when you are doubting, you will go before your God on your bended knees, asking for that light which comes alone from Heaven, to enlighten your minds to a knowledge of the truth, and will rise from your knees, I know that God will give you light, and I will say that your verdict is of God and right, whatever it shall be. Take that test, and you will have no trouble; take that test, and your consciences will be at ease. You will feel that you have done your duty to yourselves, to your country, to your holy faith, to the God before whom you and I shall soon appear, and until which you and I may never meet when we part from this place. And then, if you so feel, having done your duty to the end,

—"you may join with them
Who see by faith the cloudy hem
Of judgment, fringed with
Mercy's light."

THE CHARGE TO THE JURY

August 7.

JUDGE FISHER. Gentlemen of the jury: "Whoso sheddeth man's blood, by man shall his blood be shed." So spake the Almighty to his servant Noah when the great deluge had receded, and the ark had safely rested upon the holy summit of Mount Ararat. This is God's own law, and its wisdom is acknowledged by all civilized nations. Now and then we meet with sentimental philosophers who think themselves wise above what is written, and who deem it their duty to

lift up their voices in condemnation of this flat of Jehovah; and although they have made but few converts to their pernicious doctrines, they not unfrequently succeed in creating in the minds of honest but tender-hearted people a morbid sentimentalism, which leads them too often to shut their ears to the stern voice of justice, and listen only to the gentle, kindly whisperings of mercy, forgetting that mercy to the guilty is injustice to the innocent. With such sentimentality you, gentlemen, as jurors, have nothing whatever to do. It is no matter of yours to inquire whether the prisoner at the bar is a proper subject of executive clemency, if you believe him guilty of participating in the crime with which he stands charged before you, but simply to determine the question as to his guilt or innocence.

When the dark clouds of war which for four years had lowered on our national horizon had begun to lift, and the sun of peace was about to gladden us again with its benignant rays; when the main army of rebels who followed the traitor Lee in his retreat from Richmond had been overpowered and had surrendered to the great military hero of the age, and the army of Johnson was in vain flying from impending capture; when our city was radiant with illuminations in celebration of the downfall of the stronghold of a most wicked and atrocious rebellion; when the hearts of all loyal men were leaping and dancing to the merry paeans of victory; and when the eyes of all lovers of peace throughout the land were eagerly looking to him whose great heart had never cherished a feeling of malice for even an enemy, but abounded in love and charity for all, in the hope that ere another year should have passed away the hands which had been lifted up against each other in fraternal strife would again be clasped in friendship and brotherly love, and States dis-severed should be again united in harmonious relations; on the 14th day of April, 1865, the executive head of this great nation, the commander-in-chief of your army and navy, by the most foul and wicked conspiracy the record of which has ever stained the pages of history, was stricken down at the

hands of the assassin John Wilkes Booth, in the metropolis of the Republic, and under the very shadow of its capitol.

Historians and text-writers on the law may treat of the heinousness of the crime of imagining the death of a weak or a wicked king or of a wise and benignant monarch; but you know, gentlemen, as well as you know that you exist, that to murder the duly-elected President of the most powerful people on earth is not less atrocious in its character than to compass the death of a king or an emperor, albeit he may have sprung from the strong loins of the people who have made him their representative head, and may have no royal blood coursing through his veins. You may be told that it is a crime surpassingly heinous to take or to compass the life of him who was born to inherit a throne, simply because he may be the king of an enslaved people; but that to take the life of the President of a free republic is an offense of no greater magnitude than to murder the veriest vagabond that walks your streets; but an American jury will only believe this doctrine when the people have become so demoralized and corrupt, so devoid of the love of liberty and patriotic feeling, as to prefer to have a king and ruler foisted upon them by the accident of birth or fortunate adventure, rather than have the making of their own selection of him who is to execute their laws, and for the time being to stand as the representative head of their collective sovereignty. It is a mistake to suppose that a free people in any country will ever consider it a more heinous crime to kill a king, or even to desire his death, that it is to assassinate a president. It is of no avail to tell me that to surround the life of a president of a republic with safeguards as sacred and powerful as those which in monarchies are thrown about a king, as you have been told in the argument, is a modern idea, entertained only by those whose eyes have been dazzled by visions of stars and garters, and who are desirous of changing our free institutions for a monarchical form of government. On the contrary, they only can be opposed to guarding with sacred vigilance the life of a president of a free people who are

themselves prepared to submit to the rule of a tyrant or a military dictator. Why should the people be less proud—why should they be less regardful of the life of a ruler selected by themselves, from among themselves, than they would be of the life of him who claimed to rule over them of his own right? When this question can be sensibly answered, I shall be willing to admit that the life of a president is less worth the preserving than that of a tyrant king, and that to destroy the life of a president is a crime of less atrocity than to merely desire the death of a prince, but not till then; nor do I believe will you.

One of the conspirators, he who took the life of the President, Abraham Lincoln, on the 14th day of April, 1865—he who fired the fatal shot—in his flight from the scene of the murder was overtaken by the swift vengeance of the Almighty and died at the hands of his pursuers. Others charged as co-conspirators with him in this enormous crime, were tried two years ago by a military commission; some of them were condemned to expiate their guilt upon the gallows, and others doomed to suffer imprisonment for life on the Dry Tortugas.

You have been told, gentlemen, in the argument of this case, that those who were tried before that military commission, and hung upon its findings, were themselves the victims of a base and disgraceful conspiracy to murder. Brave, gallant, and honest soldiers of their country have been held up before you as inhuman butchers of innocent men. It has been said in support of this denunciation that the Supreme Court of the United States have, in the case of Milligan, declared that the military court which tried Herold and others for the murder of Abraham Lincoln was an illegal tribunal, organized without law, without right, and without warrant in the Constitution—a mere convocation of military men, having no right to try the cause committed to them by President Johnson; and it has been said that it was convoked, not to try, but to condemn.

In my humble judgment the Supreme Court has made no

such decision. If so, why have not the prisoners now confined upon the Dry Tortugas for complicity in the greatest crime that ever disgraced the world been released from their confinement? They have sympathizing friends enough to have applied any such decision in the direction of their deliverance, and they would not have remained there a week after the decision had been made to the effect that they were unlawfully restrained of their liberty. If I understand the decision in Milligan's case aright, it went upon the ground that the commission which tried Milligan was not organized in obedience to the act of Congress providing for the punishment of such crimes as he was charged with having committed, and the opinion of the majority went upon the additional ground that no hostile foot had ever pressed the soil of Indiana at the time when he was arraigned before a military tribunal there, and that therefore that tribunal, which condemned him for acts of a treasonable nature committed in that State, had no authority to try him, notwithstanding the whole nation was involved in the most terrible struggle for its life. The majority opinion being thus predicated upon a misapprehension of historic truth, we could not perhaps have looked for a more rightful deduction.

Unprepared, however, as all loyal men were for such an announcement, the American people would be even yet more astounded to hear it declared by any court in this country that the commander-in-chief of the army and navy, the President of the United States, has not the power, in time of war, to institute a military commission for the purpose of trying a gang of spies and traitors who have found their way within the entrenched encampments of the nation's capital, with a view to take the life of the chief of the army and navy, to assassinate all the heads of the executive departments, in the interest of the pretended government with which the Federal Government was engaged in war. They who maintain such a doctrine profess to defend it upon the ground that no such power is delegated by the Constitution, as they did who could find no warrant in that instrument to coerce seceding States

into submission to the Federal authority from which they had revolted. But the day I hope has passed by when honest statesmen will longer, if they ever did, regard the sovereignty of the Federal Union as possessing no other powers save those expressly enumerated in its Constitution.

The Government of the United States was doubtless created by the adoption of the Constitution; but when it had once been spoken into being, it stood upon the same level with other nations, and was clothed with all the powers incident to an independent sovereignty under the laws of nature and of nations; and among these was the power, in time of war or great public emergency, to arrest and inflict upon spies and traitors the most summary punishment, whenever and wherever the strong hand of military justice can be laid upon them. It is a power incident to the right and duty of self-preservation, and ought to be exercised just as the individual owes it to himself to strike down the assassin who is feeling for his heart-strings, without waiting to lose his own life in order that the courts of justice may at their leisure proceed to try the felon according to the formularies of the law and the constitution. The right of self-defense needs not to be inscribed upon parchment either for individuals or for sovereign States. The Almighty impressed this right and duty upon the hearts and minds and instincts of men long before He wrote the Decalogue upon the Tables of Stone. To say that this Government has not the power in time of war to exercise this great duty of self-preservation for want of warrant in the Constitution is to condemn the action of the Government in acquiring from France and Spain and Mexico and Russia territory lying far beyond the limits of the original thirteen States, simply because such power of acquisition and growth is not expressly provided for by the Constitution. Both these powers are but the incidents of sovereignty, requiring no warrant in written governmental charters; they are derived from the common law of nations and are co-existent with sovereignty.

But with this military commission, gentlemen, you have no

concern at this time; whether it was a legal or illegal tribunal is not the matter upon which you are now called to decide. The oath that you have taken requires that you shall "well and truly try, and true deliverance make, between the United States of America and John H. Surratt, the prisoner at the bar, whom you have in charge, and a true verdict give according to the evidence."

The prisoner stands before you indicted for the murder of Abraham Lincoln, on the 14th day of April, 1865, in this city. About the time and place and manner of the death of our late President no controversy has been made in the case. If there had been, your recollection of a nation in tears and of a whole civilized world in mourning would have revived your memory of the sad and terrible fact. The only question, therefore, for you to determine is, whether the prisoner at the bar participated with John Wilkes Booth and the others named in the indictment, or either or any of them, in this diabolical crime. If from all the evidence in the case your minds shall have been convinced beyond a reasonable doubt growing out of the evidence that the prisoner did co-operate with them or any of them; if the evidence shall have produced a moral conviction in your minds, that the prisoner did participate in the conspiracy to murder, or in a plot to do some unlawful act which resulted in this foul murder, no consideration as to the legality or illegality of the tribunal which tried the prisoner's mother, no feelings of sympathy for other members of the family, no consideration of his youth, or that other lives have already been forfeited for the crime, should for a single moment tempt you to step aside from the plain pathway of duty. If, however, upon a full and careful consideration of the whole testimony, uninfluenced in the slightest degree by prejudice or bias of whatever character, that moral conviction of the prisoner's guilt shall not have been impressed upon your minds, but you shall still entertain an honest and unbiased reasonable doubt, fastening itself upon your judgments, and suggesting that all the credible proofs pointing in the direction of the prisoner's guilt may

IX. AMERICAN STATE TRIALS.

be strictly true and may still be consistent with some hypothesis of innocence which you can construe from the whole credible evidence in the cause, you will give him the benefit of such doubt. It is my duty, however, gentlemen, to say to you that this doubt, to the benefit of which the prisoner is entitled, must not be a mere speculative or capricious one, prompted by passion or prejudice or pity or feeling of any kind, save the desire in your hearts to do exact and equal justice, by rendering a verdict in strict accordance with the facts. It must not be a vague suggestion, that after all the prisoner may not be guilty; it must not be the mere shadow which the angel-wing of mercy may momentarily cast upon your mental vision; but it must be such a doubt as the voice of justice shall whisper in your ears. If the testimony shall convince your understanding of the guilty participation of the prisoner with Booth or others in the crime, such conviction is the moral certainty required by the law, and it excludes the idea of reasonable doubt.

The indictment in this case charges the prisoner with being engaged in a conspiracy with John Wilkes Booth and others to effect the murder of Abraham Lincoln, and with having succeeded in the accomplishment of that atrocious crime.

It has been argued by the counsel for the prosecution that to take the life of the President of the United States is a crime so heinous in its character that each of the conspirators is responsible for the act of each of his co-conspirators committed in furtherance of the conspiracy, so long as he continues to be a member of that conspiracy; and that he can only be relived of criminal responsibility by repenting, abandoning, and renouncing his connection with the conspiracy, and countermanding any orders he may have given in relation to it.

On the other hand, it is contended by the counsel for the defense that the indictment nowhere charges a conspiracy to kill or the killing of the President of the United States; but simply charges the killing of Abraham Lincoln, the individual; that, inasmuch as there is no allegation in the indict-

ment showing that Abraham Lincoln at the time of the murder was President of the United States, but simply avers the killing of an individual, the case is to be governed solely by the same principles of law which are applicable to ordinary murder, and cannot be regarded by you as being in any degree more heinous in its character; that even admitting that to take the life of the President of the United States is a more heinous crime than the murder of an individual in private station, yet, for the want of an allegation in the indictment of the fact of presidency, you cannot, no matter what the evidence may be as to the killing of the President and all the heads of Departments and the Vice-President, in your consideration of this case and in making up your verdict, regard it as a crime standing on the same footing in its atrocity with the crime of treason or compassing the death of a king. They argue that although by the common law of England to compass the death of a king is a crime so heinous in its character as to admit of no accessories before the fact, yet the law of murder is different in England and here, and that in case of murder he who counsels, aids, or commands another to commit murder, without being present at the scene of the crime or near enough to render material aid in its actual commission, can only be proceeded against as an accessory before the fact, and not as a principal, as in this case.

You are told that it must both be alleged in the indictment and proved by the evidence, or you cannot consider the killing of a President, or the conspiracy to murder him and all the chief officers of the Government, for the purpose of bringing anarchy and confusion on the nation, and thus to favor the cause of the rebellion.

But there are some things of which courts and juries will take judicial notice. One of the elements of the definition of murder is "the killing of a reasonable creature." It is never either alleged in the indictment or proved in the evidence that the subject of the crime is a human being. It is not necessary to do so, because it is one of those things that are presumed to be taken judicial cognizance of. It is not al-

leged in the present indictment that Abraham Lincoln was a reasonable creature, nor has any proof been adduced to show it; and yet we take judicial cognizance of the fact. So we may take judicial cognizance of the fact that at the time of his murder he was the President of the United States, because it is something known to every man, woman, and child in the country capable of knowing anything; and taking such judicial cognizance of it, in my opinion, it need neither be alleged in the indictment nor proved by witnesses.

It is true, as stated by the counsel for the defense, that it has been laid down by Sir Matthew Hale, in his work entitled "Pleas of the Crown," that although treason is so heinous in its character as to admit of no accessories before the fact, but that its heinous character makes all principals who in any way contribute to its commission, yet that murder and other felonies, not being so heinous in their character, aiders and abettors are to be proceeded against only as accessories before the fact. When, however, Sir Matthew Hale comes to treat of misdemeanors (a lower grade of crime than felonies), he tells us that they will not admit of accessories before the fact, because of their want of character sufficiently heinous; the precise reason for which accessories are admitted in crimes amounting to felony. Later writers have generally followed the law as laid down by Lord Hale in this treatise, and many decisions have been founded upon that authority, the writers and judges seeming contented with his reasons, or indisposed to depart from the principle laid down by him; but I confess the reasons are not very satisfactory to my mind. I have never been able yet to discover any sound reason why he who originates the plan of murder, but employs another or others as his agent or agents to perpetrate the crime is not equally guilty with the actual perpetrator of it. If I, actuated by the malice of a depraved and wicked heart, conceived the purpose of murdering him whom I suppose to be my personal enemy, but, lacking the opportunity or the courage necessary to carry my purpose into execution, should hire another person, who willfully executes my wicked design for me, common

sense and the common conscience of mankind, which, after all, seldom fail to direct us to the true principles of law (which has been defined to be the perfection of reason or common sense), would seem to dictate that I cannot be less guilty than the agent whom I had employed, upon the well-known principle of law that he who does an act by another does it by himself—a principle which has been recognized by the Supreme Court of the United States in the case of *Gooding v. The United States*, 12 Wheat. 460, as applicable to criminal as well as civil cases—a principle recognized in more ancient and higher authority than even the Supreme Court of the United States or Lord Hale, or any other writer upon the law to which we are accustomed to look for principles and precedents.

There are two cases which now occur to me (probably others might be found), reported in that book of highest authority known among Christian nations, decided by a Judge from whose decision there can be on appeal, and before whose solemn tribunal all judges and jurors will in the great day have their verdicts and judgments passed in review. Man cannot make better law than God, nor can he better expound or administer the law. One of these cases is that of Naboth and Ahab, contained in the 21st chapter of the First Book of Kings. Naboth, the Jezreelite, was the owner of a vineyard hard by the palace of Ahab, king of Samaria, which had excited the cupidity of the latter, who offered to purchase it with money or to give in exchange for it another vineyard; but Naboth was unwilling to part with it, because it was the inheritance of his fathers. This excited the wrath and displeasure of King Ahab and his Queen Jezebel, who conspired together to effect the death of Naboth, and they succeeded by having witnesses suborned to swear against him as a blasphemer, that he might be stoned to death by the elders and the nobles of his city. The plan was laid by Jezebel; the motive to the murder was Ahab's cupidity, and he lent his wife his signet ring with which to seal the letters which she sent to the elders and nobles whom she employed as the agents to

consummate the wicked plot. Two sons of Belial, we are told, were the perjured witnesses who proved the blasphemy on Naboth, and this effected his death. Ahab, profiting by the crime, took possession of the vineyard of Naboth; but the word of the Lord came to Elisha, the Tishbite saying, "Arise, go down to meet Ahab, king of Israel, which is in Samaria; behold he is in the vineyard of Naboth, whither he has gone down to possess it, and thou shalt speak unto him, saying, Thus saith the Lord, Hast thou killed, and also taken possession? In the place where dogs licked the blood of Naboth shall dogs lick thy blood, even thine. And it came to pass that dogs licked up the blood of Ahab, according to the judgment which God had decreed against him."

The other case to which I have alluded is that of David and Uriah, recorded in the 11th chapter of Second Samuel. Uriah, a loyal subject of King David, was a brave and gallant soldier in the army of Joab, which was engaged in war with the Ammonites. His wife, Bathsheba, was comely in person and very beautiful to look upon, and King David coveted her. In order to effect his wicked purpose, he sent a letter to Joab, his chief captain, even by the hand of Uriah himself, saying, "Set ye Uriah in the forefront of the hottest battle, and retire ye from him, that he may be smitten, and die." Joab obeyed the behest of his king, and Uriah, the Hittite, was slain. But the Lord sent his prophet Nathan unto King David, saying, "Thou art the man" who did this evil thing. "Thou hast killed Uriah, the Hittite, with the sword, and hast slain him with the sword of the children of Ammon." This judgment of the Lord was not that David was accessory before the fact to this murder, but was guilty as the principal, because he procured the murder to be done. It was a judgment to the effect that he who does an act by another does it himself, whether it be a civil or a criminal act.

The counsel for the prisoner at the bar in this case contend that he was not in the city of Washington, or near enough to the scene of the murder to have taken part in it by rendering material aid to Booth, the actual assassin, who fired the fatal

shot, and that the evidence adduced on the part of the Government, as well as that of the defense, shows such to have been the fact. This is what is termed in the law an *alibi*, the Latin word for elsewhere. This, gentlemen, is a line of defense always held in little favor by the courts and juries, not only because it is one which common sense teaches us may be most easily supported by perjury, but because it is one involving identity of time, as to which mistakes are very easily made, so that it is by no means difficult to support this plea frequently (and especially after the lapse of months or years) by the testimony of honest and truthful witnesses, who, on account of the great liability of the human mind, particularly when influenced by the promptings of pity or sympathy or friendship, to be mistaken as to the precise point of time, in reference either to days or hours. The past history of crime teaches us that in the days of notorious public depredators upon society it was a very common device to gallop upon fleet horses straight across the country, and by appearing before credible witnesses shortly after the commission of a robbery or other crime to obtain the testimony of such witnesses, and thus secure an acquittal by an *alibi*. We have an instance of the honest fallibility of the human memory in respect to the identity of time, under the prompting of pity or friendship or sympathy, in the case of the Commonwealth v. Webster, for the killing of Dr. Parkman, some eighteen years ago, in which several witnesses of respectability swore so positively and yet so honestly to facts placing it beyond the pale of possibility that Dr. Webster could have been present at the scene of the murder, if that testimony in relation to the time had been strictly true, that the general sense of the community seemed in doubt as to whether Littlefield, an important witness for the prosecution, was not in fact the real murderer of Parkman; and yet, after the verdict of the jury had been rendered and the sentence of law pronounced against the prisoner, Webster, who knew better than any other mortal, made a full confession of his guilt. If it were true that hard riding straight across the

country in olden times furnished facilities for criminals to establish the defense of an *alibi* by honest witnesses how much greater facilities for that purpose are furnished at the present day by the power and speed of steam, by which space and time have become almost annihilated?

I have already said that this plea has always been regarded with extreme suspicion; and yet, when once clearly established to the satisfaction of the jury, it constitutes the most complete defense. But an honest and sensible jury cannot fail to regard it with suspicion, unless it shall be so clearly established as to satisfy them of the prisoner's absence from the scene of the crime. The suspicion which attaches to this plea has passed into a proverb among the people, as well as with courts and juries, and it is true that an unsuccessful attempt to establish an *alibi* is always a circumstance of great weight against the prisoner, because a resort to that kind of defense implies an admission of the truth, of the relevancy of the facts alleged against him, and the correctness of the inference drawn from them.

In this connection I may also observe, that when once a conspiracy to commit a crime shall have been proved and the connection of the party who is on his trial for an act done in pursuance of that conspiracy with it, if the evidence shall satisfy the minds of the jury that he was present either constructively or actually, that is to say, either at the scene of the crime in person or near enough to give the slightest support or encouragement to the actual perpetration of it, or if he be remote from the scene for the purpose of aiding it and in performance of this part of the plan assigned to him, he is equally guilty with his co-conspirators who actually perpetrates the crime.

You have been told, gentlemen, by the counsel for the defense, in a manner not very respectful, certainly by no means complimentary to the court, that you are the judges of the law as well as the facts in criminal cases, and that you have the right to disregard the instructions of the court in matters of law, and they tell you that their exposition of the law and

the weight of character they possess may be more safely relied upon than the instruction which may be given you by the court. The weight of character of a prisoner's counsel would be a very variable and not unfrequently very unsafe criterion by which the jury should judge as to the law of his case. Perhaps they would have you regard the court as sitting upon the bench merely to discharge the duty of preserving order and decorum in the courtroom, which probably the crier of the court or the bailiff might be disposed to regard as a usurpation of his prerogative. And yet, if the jury are to entirely disregard the judge's instructions as to the law of a case, I confess I see but little else left than that for him to perform.

It is true, gentlemen, that you have the power, and in cases where your consciences are thoroughly satisfied that the instructions of the court are dictated not by an honest desire to enlighten the jury as to the true state of the law, but by corrupt and wicked motives, you may have the right to disregard the instructions purposely intended to mislead you; but to claim that the jury are better judges of what the law may be than the court, is about as reasonable as to assert that a plain farmer or merchant may be taken fresh from his plough or counter and be more capable of navigating and manoeuvring a steam frigate in a battle or to lead your armies to certain victory than your admiral or your general-in-chief. In my opinion, you have just the same right to disregard the evidence of the witnesses who stand before you unimpeached in any matter respecting the facts involved in the cause as you have to disregard what the court may say to you under an official oath as to the law that may apply to the facts. A jury have the power, if they chose to exercise it, after having assumed the obligations of an oath, to say that they will neither believe the judge nor the witnesses, but will decide upon the law and the facts of the case according to their own caprice or the confidence which they may repose in the character of the counsel on either side; but such is not the purpose for which juries were instituted, and they

have no right so to act. When the witnesses in the cause have testified before you as to the facts, it is then the office of the judge, under his official oath, to testify to you in the spirit of truth, according to the best of his knowledge and ability, as to what is the law which may be applicable to those facts; and an honest jury will disregard neither the testimony of the witnesses nor the instructions of the judge, unless they shall be clearly satisfied that corrupt motives have actuated the one or the other. They will leave the party where the law leaves him—to his legitimate redress—a writ of error to the appellate court.

Much stress has also been laid by the counsel for the defense upon a fact which they assert, that during the progress of this trial more than one hundred and fifty exceptions have been taken to the ruling of the court concerning the admissibility of evidence. If they have thought it necessary to calculate the number of these exceptions, and parade them before you with a view of having you to render a verdict according to irrelevant evidence not before you, rather than according to the testimony which you have heard, I have no disposition to criticise their taste, but leave them to present their case in their own way. At the same time I feel it my duty to remark to you, that if counsel will be so bold as to present propositions to the court which every tyro in the profession ought to know are untenable, it does not necessarily follow that the judge must always be so weak as to sustain them. It has heretofore been supposed that exceptions to the ruling of a judge at *nisi prius* were intended to be passed in review before the appellate tribunal. I have never before known them to be neatly calculated and presented to the jury by way of argument.

In reference to these matters, I may observe that perhaps I owed it to the dignity of the bench to have interrupted counsel in their conduct of the case in this particular; but in a cause involving the life of the prisoner upon the one hand, and the vindication of the outraged justice of the nation in mourning upon the other, I deemed it my duty to cast not

an atom in the one scale or the other which might by any possibility tend to prejudice either side of the issue.

I come now to direct your attention, but in a general way only, to the evidence in the cause. It would be impossible for me to review it in detail without taxing your patience, which has already been nearly exhausted. I have already said that the counsel for the defense rely upon an *alibi* to acquit the prisoner. They also have endeavored to destroy the credibility of many of the material witnesses whose testimony has tended to connect the prisoner with the body of the crime, either by contradicting them by other witnesses on points material to the issue or by attacking their character for credibility. Whether they have succeeded in destroying the credibility of any one or more of them, it is your province alone to determine.

On the other hand, the prosecution rely for a conviction on the evidence which they have spread before you, tending to show the malice of the prisoner towards the Federal Government, and especially towards the deceased, Abraham Lincoln, for a long time prior to the murder. His frequent communications and intercourse—private, confidential, and mysterious—with Booth and the other conspirators, personally and by letters; his interest manifested in procuring quarters, as they allege he did, at the Herndon House, for Payne, who attempted to assassinate Secretary Seward; his great intimacy with the other conspirators; his procurement of arms for aiding the escape of Booth and Herold, and his concealment of them at Surrattsville, at the house of John M. Lloyd, shortly prior to the assassination of the President; his fabrication of false accounts and contradictory statements as to the object of his movements; his expressions, used to Smoot shortly before the assassination of the President, that if the Yankees knew what he was doing or was about to do they would stretch his neck for him; his fixing of the wooden bar against the door of the President's box at the theatre; his presence here in this city on the day of the murder; his being in company with Booth and McLaughlin at the barber's on the

morning of that day; his appearance in front of Ford's theater on the night of the murder; his excited and suspicious manner while there, and his calling out the time to Booth and the other man with them two or three times shortly before the fatal shot was fired by Booth as the signal for action; his alleged activity in the management of the entire conspiracy planned for the fatal evening of the 14th of April; his flight from the city on the morning of the 15th of April, as soon as it was possible for him to leave; his swift haste to get into Canada; his abandonment of his mother and family; his concealment of himself in Canada at the house of the rebel sympathizers Boucher and LaPierre; his disguise of his person by the coloring of his hair, the changing of his dress, and the wearing of spectacles; his flight from Canada under an assumed name and disguised personal appearance; his free and voluntary confessions to Dr. McMillan on board the steamer *Peruvian*; his constant apprehension of the United States detectives, even on the British steamer and on British soil; his flight from England to Rome, and entering the Papal service; his confession to St. Marie while there as to the manner of his escape from Washington immediately after the murder; his failure to prove to you where he eat and slept during the time when he left Montreal, on the 12th of April, until he returned on the 18th of the same month; his flight from Rome to Egypt—all these matters have been presented to you for your careful and candid consideration. You are to weigh them; you are to determine whether any or all of them are true, and to make up your verdict in strict accordance with the facts.

In giving these matters your attention, you will not fail to remember that flight from the scene of crime, the fabrication of false accounts and contradictory statements, and the concealment of instruments of violence, are all circumstances strongly indicative of guilt. You will further bear in mind that a confession of crime, when freely and fairly made—the body of the crime being proved—which is in this case the fact of the murder) is one of the surest proofs of guilt, be-

cause it is the testimony of the omniscient God, speaking through the conscience of the culprit. You will not, either, forget that circumstantial evidence carries with it the highest degree of moral certainty. These are well-settled rules of law, to which it is my duty to invite your attention.

From the observations which I have addressed to you, you will infer, first, that a conspiracy formed in time of war to take the life of the President and Vice-President of the Republic and the heads of the executive departments, for the purpose of aiding the enemies of the Federal Government, by throwing it into anarchy and confusion, is treason as heinous and as hurtful to the people of this country as the compassing the death of the king or queen of Great Britain is to the subjects of that realm.

Second. That every person engaged in such conspiracy, as long as he continues a member of it, is responsible not only for the act of treason, but for any murder or lesser crime which may flow from it in its prosecution.

Third. That the Government may waive the charge of treason against any or all the conspirators, and proceed against them for the smaller crime of murder, included in the greater crime of treason.

Fourth. That under an indictment for a murder resulting from the prosecution of such conspiracy, evidence of the entire scope of the conspiracy may be considered in estimating the heinous character of the offense laid in the indictment.

Fifth. That it was not necessary to aver in the indictment the fact that Abraham Lincoln, the victim of the murder, was at the time of its commission President of the United States, or to prove it, in order to allow the jury to take that fact into the account in determining the heinous character of the crime, it being a fact of which courts will take judicial cognizance.

Sixth. That he who does an act by another does it by himself, and is responsible for its consequences in criminal as well as in civil cases.

Seventh. That although an *alibi*, when clearly estab-

lished, forms a complete and unanswerable defense, the mere absence from the immediate scene of a crime resulting from a conspiracy unrepented of and unabandoned by the party charged, will not avail him if he were at some other place assigned him in the performance of his part in that conspiracy.

Eighth. That this plea is, unless clearly made out, always regarded with suspicion, and a circumstance weighing against him who attempts it, because it implies an admission of the truth of the facts alleged against him, and the correctness of the inference drawn from them.

Ninth. That flight from the scene of crime, the fabrication of false accounts, the concealment of instruments of violence, are circumstances indicating guilt for the consideration of the jury.

Tenth. That although a confession in the slightest degree tainted with the promise of favor, or by duress or fear, is not admitted as evidence against him who makes it, yet, if made freely and voluntarily, is one of the surest proofs of guilt.

As to the credibility of the witnesses, you are to be the exclusive judges. You have seen them face to face. You know whether they are confirmed or unsupported or contradicted by other witnesses of credit and other circumstances. You are to judge whether their testimony has been impeached, and are to consider every matter which will tend to shed any light upon the question as to what has been truthfully or falsely deposed by any witness.

You will, therefore, diligently collate and compare and carefully weight and consider all the testimony in the cause on both sides. You will not disregard or reject the testimony of any witness unless you shall be satisfied that he has been shown to be unworthy of your credence by reason of his want of character for truth, his contradicting himself or being flatly contradicted by others of better credit, or by dishonesty of purpose manifested by his conduct and manner in testifying before you, or unless what

he has told you is inconsistent with the other evidence in the cause.

In conclusion, you will take the case with the honest purpose to do justice to the United States on the one hand and the defendant on the other, bearing in mind that it is the office of the law to secure the punishment of the guilty and the protection of the innocent.

If John H. Surratt, in the honest and intelligent convictions of your judgment and consciences, is not guilty, so pronounce by your verdict, thus giving a lesson of assurance that a court of justice is the asylum of innocence. On the contrary, if guilty, pronounce him guilty, and thus by your verdict furnish a guarantee of protection to the intended victims of guilt, and a testimonial to the country and to the world that the District of Columbia, set apart by the Constitution of the United States as the theater for the exercise of Federal power, gives the judicial guarantees essential to the protection of the persons of the public servants commissioned by the people of the nation, to do their work safe and sacred from the presence of unpunished assassins within its borders. You will take the case, gentlemen.

At a little after noon the *Jury* retired.

August 10.

At one o'clock today, after being in consultation three days, the *Jury* came into court.

The Clerk. Gentlemen, have you agreed upon a verdict?

Mr. Todd. We have not been able to agree.

JUDGE FISHER. I received this morning a communication from the jury saying that they stand now as when they first balloted upon entering the jury room—nearly equally divided. They are firmly convinced that they cannot possibly return a verdict, and they ask to be dismissed. Gentlemen, this is the second or third communication that I have received of a similar tenor. If I thought there was any possibility of your coming to an agreement as to the guilt or innocence of the prisoner at the bar, I should have no objection to keeping you a sufficient length of time to enable

you to do that, but as you have several times informed me that it is impossible you should agree, and as you stand now precisely as you did at first, you are hereby discharged.

The *Jury* thereupon left the court room.

MR. CARRINGTON AND MR. MERRICK'S SPEECHES TO
THE JURY (*Ante*, p. 38).

I. *Mr. Carrington*, the United States District Attorney, began his address to the jury (see *ante*, p. 38) by a description of the awful tragedy of the 18th of April, and a denunciation of John H. Surratt as one of the prime movers in the conspiracy, saying:

Do you remember the feelings which inspired your hearts when the telegraphic wires first whispered the glad tidings that the national cause had triumphed over that cruel and causeless attempt at the nation's life; when you realized the fact that peace, sweet, gentle peace, had returned once more to take up its abode in our beloved and bleeding country? Do you remember how your bosoms heaved and thrilled and swelled with emotions of patriotic pride and pleasure as the booming cannon proclaimed the gratitude of a brave, generous, loyal and devoted people? Do you remember the prospects, so bright and joyous, so full of life and light and joy and hope, as the war clouds were seen passing away to the shades of eternal night, and the rainbow of peace appeared to our delighted vision, spanning the whole political horizon? Do you remember the feelings which seemed to possess your very souls as your wives and children bowed with you around the family altar to offer the incense of praise and adoration to the God of our fathers and our God for His great deliverance; for it has been truly said that "it was the Lord's doing, and it was marvelous in our eyes." In that hour of the nation's jubilee, when a song of triumph seemed to rise from the great heart of the American people to Heaven, tell me, gentlemen of the jury, did you not feel your heart instinctively turned and warmed towards that great and good man who had been mainly instrumental, in the hands of the Almighty, for the salvation of your country? I do not ask what your feelings for him previously may have been. I know that he was the object of special hatred and malice to the enemies of your country. I know that no words of denunciation and abuse were too opprobrious to be heaped upon his devoted head; but, to indulge a familiar paraphrase, all his feelings seemed to lean to mercy's side. Hear him give expression to the feelings of his heart, in those memorable words, so familiar to the public ear, and which ought to be inscribed in letters of gold on the portals of your national Capitol, "With malice towards none, with charity for all, let us with firmness pursue the right, as God gives us to see the right." "This Duncan was so clear in his great office, and bore his faculties so meek, that his virtues seemed to plead like angels, trumpet-tongued, against the deep damnation of his taking off." He needs no eulogium to embalm his memory in the hearts of his countrymen. There it will

remain green and fresh forever and forever. I speak to men who, perhaps, may have differed from him politically. You knew him personally. The name of Abraham Lincoln will be remembered by the world, in the strong and expressive language of another, "while liberty is a blessing and tyranny a curse." Behold that tall, familiar figure. I know to whom I speak. The time was when it created in your minds a feeling of political hostility, and perhaps of personal enmity, for you considered him the representative of a hostile party; but you gradually learned to respect, then to honor, and at last to love the kind, gentle, and generous soul it represented. Tell me, did you ever have any transactions with him? Was he not kind, gentle, patient, forbearing, and charitable? It was a standing order, if I have been correctly informed, that wherever he was, or however employed, he was always to be seen where a question of life or death was concerned.

However this may be, he thinks proper to exercise the privilege of the humblest citizen in the community, in company with his own wife. Almighty God! has it come to this, that an American citizen cannot feel safe while he walks, or sits, or sleeps by the side of his own wife? In the sacred presence of woman—and be it said to our eternal credit that no nation is more courteous and more honorable in their bearing to the fair sex than the American people—in her company, with a few invited friends, for the purpose of getting a little recreation from his labors, he goes to a place of public entertainment in the very midst of the national metropolis, and almost within sight of the presidential mansion. He is unconscious of the slightest design upon his life or personal safety. *Hæu! mens hominum nescia futuri.* What and whom has he to fear? He is received with acclamations by his assembled countrymen; in the language of the witness Major Rathbone, with "vociferous cheering." He is escorted to a private box specially prepared for him, decorated and adorned with the American flag, the emblem alike of freedom and protection. There he is. The American Union has survived the shock of contending armies, and "the untold dangers of treason, rebellion, and privy conspiracy"—borrowed words, but familiar in the history of the Church. There he stands upon the very summit of human prosperity, dignity, grandeur, and glory. His enemies are at his mercy and under his feet. But, mark you, no word of bitterness escapes his lips.

Tell me, if you can, of an unkind, ungenerous, or uncharitable sentiment he has ever expressed. If I have been correctly informed he remembered that the hour of victory is the hour of magnanimity. At that time his heart was overflowing with sympathy and love, not only for those misguided men who rushed madly into the rebellion in obedience to the orders of their commanders whom they did not understand, regardless because unconscious of their great crime and its consequences, but even for those cruel and bloody traitors who raised their parricidal arms against the Government which had never harmed, but which had ever shielded and protected them. Of him I might say, as was said of another distinguished public char-

acter, under somewhat similar circumstances, "O, what an elevation! but alas, alas, what a fall!" Our joy is suddenly turned into deepest sorrow. The emblem of freedom which recently floated so proudly over land and sea is draped with the emblems of mourning, and a nation in tears follow their beloved and honored chief to a patriot's and a martyr's grave.

Gentlemen of the jury, shall I review the horrid details of this cruel and bloody tragedy? It is daguerretyped upon your minds and memories. Perhaps even now, like some horrible panorama, it is passing before your imaginations. Like Sergeant Dye, it may have disturbed your thoughts by day and your dreams by night. See him, seated as I have already described. At that very time, as the great dramatist represents the murder of the good King Duncan, the assassin is stealing upon his secure hour; the instrument of death is leveled at that noble head which had guided the ship of State through the storm of civil war to the haven of permanent and honorable peace; and, as I have heard a somewhat similar scene described, "you see the flash, you hear the report of a single pistol, and the disembodied immortal spirit of Abraham Lincoln stands before the Judge of all the earth." We can follow him no longer, gentlemen of the jury, it is said, with our mortal vision; but may we not without impiety indulge the hope that the eye of faith can follow the great patriot and philanthropist to the bosom of the blessed Savior; for His mission upon earth was a mission of mercy. He left the realms of glory in part to burst the bondsman's chains and to set the captive free.

Gentlemen of the jury, where are the men and the women who committed this awful and Heaven-daring crime? I do not ask who fired the fatal shot; I do not ask who conceived it; I do not ask who matured it; but where are the men and the women, however remotely connected with this crime, as a witness has strongly said, "against society and against civilization?" The Satan of this infernal conspiracy has gone to hell, there to atone in penal fires forever and forever for his horrid crime; but the Beelzebub still lives and moves upon the face of this green earth, as the dramatist says, "to mock the name of man." In John H. Surratt, the prisoner at the bar, you behold the Beelzebub of this infernal conspiracy. Second he may be in rank and power, but none the less in hatred, malice, and revenge—those red and bloody demons lurking in every wicked, base, depraved, and malignant heart, and prompting to the commission of those crimes which shock and outrage human nature. He was false to his country while professing allegiance to its laws and institutions, and false to his Government while enjoying its favor and protection. He was not one of those misguided young men who, in the honest belief that they were doing God's service, armed themselves like gallant soldiers to fight in what they believed to be a righteous cause. He was false to the mother who bore him, whom he deserted in the hour of danger and of distress. The gallows upon which she expired should have been his throne. There he might have palliated or irradiated with some show of gallantry

and parental affection the horrid crime he had committed. But, false to every sentiment of truth, of honor, and of patriotism, he seeks to save his wretched life in the plains of Italy or the sands of Egypt. But the avenger of God pursues and overtakes him. This deeply injured and insulted Government stretches its long and strong arm across the ocean which rolled between him and the home he had dishonored, and he is here today before an honest jury of his country to pay the demands of an outraged and a violated law. I arraign him as the murderer and the assassin of Abraham Lincoln; for, when John Wilkes Booth fired the fatal shot, where were the other conspirators, including the prisoner at the bar? It matters not where they were. However, a good deal has been said about that, and this question will be hereafter more fully discussed. Every man was at his place, performing his part toward the execution of their common bloody purpose. This conspiracy may have been an infant at first, and gradually assumed the proportions of a giant, stretching its long and strong arms from the lakes to the gulf, and from ocean to ocean. One may have been standing, as I have heard it strongly expressed, in the Arctic circle, another in the prairies of the West, and another in the everglades of Florida. In legal contemplation, it was one great artificial person, animated by the same spirit and moving towards the same end. Every conspirator was a member; and the act of one was the act of all. If this be so, as I shall hereafter discuss by the law of God and of nations every man connected with it is equally guilty of this horrid crime, which filled the great heart of Christendom with horror.

II. *Mr. Carrington* next reviewed the various phases of the conspiracy as follows:

The first scene of this bloody tragedy is laid on Pennsylvania avenue, in the month of April, 1864. Can this be so in this Christian age and in this Christian community, where, however we may differ, we profess to worship the Prince of Peace as the only true, living God? Here, in the metropolis of the nation, on Pennsylvania avenue, in April, 1864, three men are overheard in private mysterious conversation. The subject is the murder of Abraham Lincoln, President of the United States. One suggests as the instrument of death a telescopic rifle. "Oh, no," says another, "we might kill his wife and child." His heart was touched with pity. O, the gentle savage! In this remark he was illustrating what the great poet has said, that the toad, ugly and venomous, has a precious jewel in its head. "No," replies the other, "we will rid this country of husband, father, wife, and child, if necessary to the execution of our purpose." Perhaps he may have alluded to poor little "Tad," whom you have seen here as a witness upon the stand; for that little boy is associated in our memory with his murdered father. You have felt the inexpressible tenderness of a father's love. You know how that kind old man loved his youngest child. "We will murder all, if necessary to the execution of our bloody purpose," exclaims one. Do you doubt it, gentlemen of the jury? This does not depend upon the

testimony of any imported witness, or even on that of a northern man or woman, but upon the testimony of a lady born and bred in your own city—Mrs. McClermont, an unimpeached and unimpeachable witness, against whose testimony there could not be a breath of suspicion. If the face is an index of the human heart, you could form an accurate judgment of her character and the integrity of her testimony. With the artless simplicity of innocence and truth she tells her simple story. What do you see? In April, 1864, malice, hissing hot; murder conceived and contemplated against the President of the United States. And who constituted that party? John Wilkes Booth was one. Who was he? The intimate friend and associate of the prisoner at the bar, and the pet of Mary E. Surratt. Another was George A. Atzerodt, the "pet" of the ladies at No. 541 H street, for they gave him the sobriquet of "Port Tobacco." The third, Herold, who, when escaping from his work of death, to refresh himself, drank the whisky provided by Mary E. Surratt, at the same time arming himself with weapons prepared and concealed for him by the prisoner at the bar. I am not now treading upon any disputed ground. Oh, gentlemen of the jury, do not let us trifle with the most solemn things that can engage the human heart. You know what I state to be true. If there is any faith in human testimony, you must know that this conspiracy was conceived as far back as April, 1864, and that it was a year old at least before this bloody deed was committed.

Where was the second scene in this horrible tragedy? It was laid in the city of New York, on Third avenue, illustrating the truth of what I said in my exordium (as Mr. Bradley was kind enough to designate my opening remarks), that this conspiracy extended from state to state, and, as we expect to show you, from ocean to ocean. A lady is riding in the cars with her daughter. You have seen her. She is married to a Canadian gentleman, and living in Canada, and therefore not expected to have any special interest in the honor of the American Republic. Casually passing along in a Third avenue car, in company with her child she sees two men who attract her attention. They are disguised; they are armed. The subject of the conversation is the murder of Abraham Lincoln, the President of the United States.

Two letters belonging to these men fall in the car, by one of those mysterious providences which, we know from history, if not from experience, so often happen to lead to the detection of the guilty, and which forcibly illustrate the truth of what is so beautifully expressed by the great poet of nature, "Murder, though it hath no tongue, speaks with most miraculous organ." She picks up these letters. She carries them to Winfield Scott, a man whom you knew and whom you loved; a man whom I was taught to revere, for he was the friend of my father. He says they are of importance, and carries them to the authorities. They are examined. They are now in evidence before an honest and intelligent jury. (See 8 Am. St. Tr. 59.)

Let us leave the city of New York; let us return to the metropolis of this great Christian nation, where the spires of temples rise to

Him who came to preach peace and good will upon earth. I ask you to pay a visit to 541 H street, the third scene in this bloody tragedy. I know not to what use that house is now devoted; but if I had my way, I would formally consecrate it to the Goddess Cloacina, for it could not be devoted to a more appropriate deity. Visit that place, gentlemen, and what do we see? The first figure that strikes the eye is Lewis Payne, with his herculean frame, the Moloch of this infernal conspiracy, whom Milton describes as the fiercest and strongest spirit that fought in heaven. Who is next? Atzerodt, the Belial of this horrid conspiracy, of whom Milton writes

"in act more graceful and humane;
A fairer person lost not heaven; he seemed
For dignity composed and high exploit:
But all was false and hollow; though his tongue
Dropped manna, and could make the worse appear
The better reason, to perplex and dash
Maturest counsels, for his thoughts were low,
To vice industrious, but to nobler deeds
Timorous and slothful; yet he pleased the ear,
And with persuasive accent thus began."

I do not know whether this is an accurate description of George A. Atzerodt, but judging from the evidence, he was the "pet" of the ladies at No. 541; so much so that they gave him the sobriquet of "Port Tobacco." Who next? There was Howell, the blockade-runner, who lived in habitual violation of the law, I would call him "Mammon," for he seemed to have no higher aspiration than whisky and money. Who next? There sits old Satan, high above the rest, "in shape and gesture proudly eminent." Close by his side is Beelzebub, of whom Milton says:

"than whom,
Satan except, none higher sat, with grave
Aspect he rose, and in his rising seemed
A pillar of state; deep on his front engraven
Deliberation sat and public care."

I repeat it, and I intend to demonstrate it so clearly that this jury cannot escape the conclusion, that John H. Surratt was second to John Wilkes Booth in rank and power; equal in malice, hatred, and revenge—those red and bloody demons lurking in every wicked, depraved, and malignant heart, and prompting to the commission of those crimes that shock and outrage human nature.

Who next do you see? O, that it were not so, that an American woman should be found in such company, giving her countenance and support to the cruel and bloody purposes of this infernal conspiracy. But there she is. Yes, there is Mrs. Slater. I know no infernal deity whom she could properly personate; for it has been truly said that hell has no fury like a depraved and wicked woman. I hope I shall not be understood by these remarks as casting any reflection upon the fairer sex, for I yield to no living man in admira-

tion for true female character. Gentle, virtuous, pious woman is the most beautiful object in creation; but when she yields herself to the devil, she becomes, of all objects, the most offensive and revolting. I have heard it said that the sweetest and fairest flower that blooms in the prairies of the West, when it begins to fade, emits the most fetid and offensive odor; and so with woman—when she casts aside her womanly nature and enters into a hell-inspired plot, she is, of all objects, the most offensive and disgusting, the depth of degradation being in proportion to the immense elevation from which she falls. Now, I appeal to everyone before me, has the vocabulary of the English language words adequate to express the indignation of an honest and patriotic man against this wicked woman, who, for her amusement, requested the prisoner at the bar to shoot down, in cold blood, unarmed Union soldiers while they were returning to their families and their homes from rebel dungeons, and while, perhaps, with their pinched and attenuated forms and quivering lips, they earnestly implored mercy. Gentlemen, it is a gratifying truth, which has been frequently illustrated during this cruel civil war, that the gallant soldier will with his own hand cure the wounds which he inflicts from a sense of duty. A brave man's heart melts with pity when he sees his bitterest foe under his feet and completely at his mercy. But here are a woman and a man murdering in cold blood, unarmed Union soldiers. I care not, however, whether they be Union or rebel soldiers, the crime is just as shocking and heinous. They were men in distress, and appealing to his clemency. That alone should have deterred him. Had he been a courageous, honorable man, instead of shooting, he would have afforded them protection and relief, whether friend or foe.

I come now to the fourth scene of this bloody tragedy. It is laid at Ford's theater. There you see the prisoner at the bar in company with this unsuspecting young lady, who, doubtless, had her father's permission, and who was unconscious of the company with which she was associating in the innocent pastime of witnessing a dramatic performance. John Wilkes Booth enters. He does not address himself to the lady, neither does he converse with any of the company where they are seated, but calls the prisoner aside and holds a private conversation with him. What was it? No ear heard it but that ear which hears every sound. You know what it was, however, for you have learned what passed at previous interviews of this private character, as well as at subsequent ones. Need I say to you then that that conversation was regarding the proposed murder of Abraham Lincoln, then President of these United States?

But let us pass on to the fifth scene. And here allow me to remark—and I am sure his honor, as well as my learned colleague, will agree with me—that a jury may infer from the circumstances attending the murder alone the existence of a conspiracy. On the night of the 14th of April, 1865, I have these parties at Ford's theater, the scene of this awful tragedy; the prisoner at the bar is there calling the time. I know there is some conflict of testimony in regard to this, and I shall notice that hereafter. I assume that he was there doing this very thing; but whether he was or not is im-

material to the issue, for I have shown that he had then formed his connection with the conspiracy which was in full blast. John Wilkes Booth enters the theater and fires the fatal shot, as I have already described. A whistle sounds. A whistle producing a similar sound is found at the house of Mrs. Mary E. Surratt. At that signal Lewis Payne, in another quarter of the city, invades the sacred precincts of the family circle of the Secretary of State, forces his way by the agonized wife and astounded daughter, and raising his murderous arm strikes at the faithful nurse who was making a gallant defense for his loved and suffering master. The assassin enters the sick chamber; he strikes with the fury of a demon at the emaciated form of a feeble and attenuated old man. I care not what your feelings for him may have been in consequence of difference of views on political subjects; he was a man, an old man, in his own house, which by the laws of England and America is a man's castle; there in the sacred presence of his wife and daughter the murderer strikes wildly, madly, and is only prevented by the efforts of the faithful nurse from taking the life of his weak, unresisting victim. By a miraculous interposition of Providence, however, the venerable Secretary recovers from the blows thus inflicted, and is spared to his country and his race. But the shock was too great for the mother and daughter, and they soon go, almost hand in hand, to an untimely grave. The assassin escapes. Where does he go? To the arms of Mary E. Surratt, the mother of the prisoner at the bar. With the smell of innocent blood on his garments, reeking with the blood of an American citizen, he goes to the general rendezvous, whence they had all issued upon their common mission.

III. *Mr. Carrington* in the third place took up the question of the conviction of Mrs. Surratt, the prisoner's mother, by the military tribunal, in reply to the attacks made on it by the counsel for the defense. He said:

I desire to discuss a question which, though not essential to this case, may be considered by you, in view of the manner in which it has been treated, as one of considerable importance. The learned counsel for the prisoner, who opened the defense, spoke of Mrs. Mary E. Surratt, the mother of the prisoner at the bar, as a murdered woman. Mr. Merrick, in his address to the court yesterday afternoon, speaking of the same person, called her a butchered woman. Permit me now, gentlemen of the jury, to ask you a single question by way of illustrating the unjust imputation cast upon the honest gentlemen who were charged with the solemn and important duty of trying those prisoners who were charged with being in this conspiracy to murder the President of the United States. Suppose after you have rendered a verdict of guilty against the prisoner at the bar—as I think you will do when you come to understand the clear, conclusive, crushing, and overwhelming evidence against him—a lawyer should rise in his place, before this honorable court, and denounce you as a set of murderers. Suppose that, carried away by the ability and eloquence of the learned counsel of the prisoner at the bar, adopting their theories, which they honestly entertain

and which they will present to you, you should acquit the prisoner of the horrible crime charged against him in this indictment, and I should rise in my place and denounce you as a set of perjurers, what a feeling of honest indignation would it excite in your bosoms. This is purely a hypothetical case, for I am sure that neither of the honorable counsel for the prisoner would make such an accusation; and I think I may safely say, before a Washington jury and a Washington audience, that I should be incapable of casting such an imputation on a jury of my countrymen. Yet, if not expressly, by implication, the learned counsel for the prisoner has charged those honorable men with the crime of murder. In obedience to an order of the Executive, for which they were in no way responsible, neither understanding nor pretending to understand the principle of law by which that tribunal was organized, certain officers of the army of the United States, under the solemn obligation of an oath, undertook the most awful duty which could perhaps devolve upon human beings. After a calm, impartial, and intelligent consideration of all the facts adduced in evidence before them, they pronounced Mary E. Surratt guilty of murder.

I most kindly and most respectfully, but most emphatically, repudiate the unjust imputation that Mary E. Surratt has been murdered, as was alleged by one of the counsel, and butchered as alleged by another. Where is the evidence to justify it? If they have a right to make this accusation, have we not a right to repel it? For what purpose is it introduced before this jury? Is it an appeal to your prejudices? I make no such accusation against the gentlemen. They charge it home upon us that she was a murdered and butchered woman. I deny it; and I undertake to prove to the contrary. I regret that it should have been necessary for an American woman to be executed by the judgment of an American tribunal. That verdict has been rendered by an American tribunal, and the consequence of it was the execution of an American woman. I know the character of the American people. I know that imagination revolts at the execution of one of the tender sex. But when the daughter of Herodias murdered John the Baptist, she deserved death. When Lucretia Borgia darkened the history of her country by her horrid crimes, she deserved death. And when Mary E. Surratt murdered Abraham Lincoln, the great moral hero of the age in which he lived, the patriot and philanthropist of the nineteenth century, she deserved death. There is no man who has a heart more capable of love for woman than myself. But when she unsexes herself, when she conceives, when she encourages, when she urges on, and is instrumental in committing, the crime of murder, she places herself beyond the pale of protection. The best wife who ever lived, according to Milton, our great mother Eve, is thus represented as speaking to her husband:

"What thou biddest,
Unargued I obey; so God ordains:
God is thy law, thou mine."

I believe in submission on the part of woman; submission to her God, to the laws of her country, and her husband. But when a woman opens her house to murderers and conspirators, infuses the poison of her own malice into their hearts, and urges them to the crime of murder and treason, I say boldly, as an American officer, public safety, public duty, requires that an example should be made of her conduct. A murdered woman! Who composed that military commission? They are no better men than you are, but you will not be offended with me if I say they are as good men as you are, or I, or any of us.

Here is a list of them: Major General David Hunter, Major General Lewis Wallace, Brevet Major General August V. Kautz, Brevet Major General Robert S. Foster, Brigadier General Albion P. Howe, Brigadier General T. M. Harris, Brevet Brigadier General James E. Ekin, Brevet Colonel C. H. Tomkins, Lieutenant Colonel David R. Clendennin, Brigadier General J. Holt, Judge Advocate General, John E. Bingham, special judge advocate, Brevet Colonel H. L. Burnet, special judge advocate.

I say, gentlemen of the jury, that they are all men holding commissions under the Government of the United States, and they are presumed to be honorable men. The law declares that every private citizen, and every public officer who is a servant of the American people, is presumed to be honorable until the contrary is proved. Your officers, your men, your representatives in the American army, in a case which will travel upon the telegraph wires perhaps to the four quarters of the world, have been denounced, if not expressly, by implication, as murderers and butchers, who took the life of an innocent woman. If so, when you come to try them and you believe it, say it; but that is not the question submitted to you now. She may be innocent, and the prisoner at the bar may be guilty. The subject was introduced collaterally by the learned counsel, for what purpose I know not, except for effect. Before you brand these gentlemen with the character of murderers, see that you have relevant ground to act upon. Take care, you may be in the same situation. I would not charge, and I do not think that my friends would, upon reflection, charge, men who are placed under such a solemn obligation with such a dereliction of duty.

It has been said that this military commission has been pronounced by the Supreme Court of the United States an illegal tribunal. What has that to do with the action of these officers? What has that to do with your action? What pertinency can it have to the issues now submitted to you for your decision?

But, gentlemen of the jury let us first consider the character of this crime, and then I will consider briefly the connection of Mrs. Surratt with it. I do not desire to say much about her; she is gone to her grave; her spirit has passed before the eternal Judge. Do you remember some four years ago, in passing down Pennsylvania avenue, you might have seen a little wagon drawn by a single white horse, a small squad of soldiers marching with arms reversed to the shrill scream of the fife and the melancholy music of the muffled drum. They are bearing some soldier who has fallen in his

country's cause to his long, silent home, there to sleep until aroused by a trumpet louder than the bugle-blast of war. Go in imagination to New England, and see that mother weeping over the untimely, bloody grave of perhaps her only boy; go to the sunny South, that bright and beautiful land, where the flowers bloom, now marred with gory graves, once the seat of loyalty and religion, now where horror sits plumed. Who caused it? Was it the gallant boys who met each other with arms in their hands and who now weep in common over the graves of the fallen, and meet each other like brothers? No! no. It was the wicked women and men who stirred up the strife among brethren, and urged them to war, to murder, and assassination. Of this, gentlemen of the jury, there can be no doubt; you know it, you feel it. We are one people. I indorse the sentiment of the immortal Daniel Webster: "I know no South, no North, no East, no West; I know but the country, the whole country, and nothing but the country." I love this country, from the smallest pebble that glitters upon the ocean's shore to the old pine tree that rears its solitary form upon the mountain's barren breast. We are one in a common ancestry and a common renown; we ought to be one in feeling, in sentiment, and in affection. I say it is these wicked women and men who are responsible for the untold horrors that thrilled your hearts, and filled this land with widows and orphans.

Now, gentlemen of the jury, let us review the connection of Mrs. Mary E. Surratt with this assassination. I feel the delicacy of the ground upon which I stand. I know this jury. I know that you dislike to consider this question which has been forced upon you. I did not want to do it. My duty is to prosecute the prisoner, but one of the counsel has said that she was murdered, and another that she was butchered, and it therefore becomes my duty to trace her connection with this crime, and then leave it to you to say whether she was guilty, (though not relevant to this case,) and if so, the quality of the crime which she committed. First, I will call your attention to a fact to which I have already adverted: that her house, 541 H street, was the rendezvous for these conspirators. Now, gentlemen, will you pause for a moment, and let me ask you how you can reconcile it with innocence? You remember the law, that it is not how much the party did, but whether she had anything to do with it. Can you, I say, reconcile it with innocence that this woman house should have been the rendezvous for such characters as John Wilkes Booth, Lewis Payne, Atzerodt, Herold, and John H. Surratt? Would you not know by intuition; would not you know by their conversation; would not your judgments and your hearts tell you who they were and what they contemplated? That is a great central truth, which I defy the learned counsel for the defense successfully to assail. Secondly, who furnished the arms with which the bloody deed was done? When Macbeth murdered the sleeping Duncan, he placed the blood-besmeared daggers by the side of the sleeping grooms, that his loyal friends, arising from their slumbers, seeing these blood-besmeared daggers by the side of the

sleeping grooms, might fix the crime upon them and never suspect him. The woman who furnishes the arms—the woman who puts an arm into the hand of her lover, her son, her brother, or her husband, and urges him on to the deed—by the law of God and man, is equally guilty with the one who with his own hand perpetrates the crime. Do you believe John M. Lloyd, or disbelieve him? My friend Mr. Bradley, Jr., who opened this case, said he was a common drunkard; but, mark you, he was the tenant and friend of Mrs. Surratt.

When I was examining that witness, and proposed to ask him certain questions in reference to Mrs. Mary E. Surratt, he said, "Mr. Carrington"—for he knew me personally—"I don't wish to speak about Mrs. Surratt, for she is not on trial." I said, "Go on, Mr. Lloyd." He declined. I appealed to the court, and the court said that it was his duty to answer. He was her tenant; he lived in her house; he drank her liquor. Why, it is in evidence that John Surratt, Herold, and John M. Lloyd played cards and drank together. You all know what Robert Burns says on that subject in his celebrated poem of Tam O'Shanter, in speaking of Tam O'Shanter's friend:

"Tam lo'ed him like a vera brither
They had been fou for weeks thegither."

He was the friend and boon companion of the prisoner at the bar, the tenant and confidential agent of his mother, unwilling to testify against her when put under the solemn sanction of an oath; but when required to do so he speaks out. He says certain arms were furnished him by the prisoner at the bar; that he concealed them, the prisoner showing him where they could be safely concealed; he protesting at the time against it, apprehensive that it might get him into some personal difficulty. The mother knew of the transaction, for on the 14th of April we have Lloyd's own testimony that she asked him where those shooting-irons were, for they might soon be needed, or words to that effect.

Gentlemen, I am not speaking for reputation, but to convince you. I say, first, that her house is the rendezvous; and, secondly, she furnishes arms, or knows of their being furnished. On the night of the 14th of April Booth and Herold leave the city of Washington, flying for their lives. Booth had broken his leg as he sprang from the private box where the President of the United States was seated to the stage upon which the actors were performing. Herold was his companion. Fatigued and jaded, they needed a little refreshment. They knew where to get it—at Surrattsville. They called for whisky from the agent and friend of the prisoner and his mother, and drank it out of the very bottle which she herself had left in the custody of Lloyd, stating to him at the time that it would soon be called for. She gives them a home, gives them arms, gives them whiskey, not to nerve, but to refresh them after the commission of their horrid crime. But Booth, in making his escape, needs

something more than whisky and arms. It is necessary that he should secrete himself as he traveled through the country, and that he should see persons approaching him from an immense distance. He needs a field-glass, and has it delivered to him by a friend and agent of Mrs. Surratt. She herself left it there on that very day for that purpose. Is that all? Booth is captured; he is shot; an arm is taken, if not from his dying grasp, from near his person. It is brought into this court and identified as the very arm which had been provided for him by the prisoner at the bar, under the circumstances to which I have just referred.

Is that all? That is enough. I may have something more to say about this spirit of sickly, mawkish sentimentality, as it is called. Is not that enough? That is not all. Mrs. Surratt goes to her home; the officers of justice, by a sort of intuition, find their way to 541 H street. While they are there an individual, in the disguise of an honest workman, who made a living, one would suppose, by the sweat of his brow, makes his appearance. It excites suspicion, and he is arrested. He turns out to be Lewis Payne, the very man who had been quartered at Mrs. Murray's house—the honest Irish lady whom you saw here, and who, when she received him, was entirely unconscious of his true character, but who was imposed upon by the conjoined efforts of Booth, Surratt, and Mrs. Mary E. Surratt, which would prove her at least an accessory after the fact. Taken altogether, it proves that she was engaged in the conspiracy. When he is arrested—and he says he came there for the purpose of digging a ditch, for which purpose he had been employed by the lady of the house—she is asked, "Do you know this man?" There is no disguising that; that depends on evidence which is irrefragable, which cannot be assailed successfully. Raising her hands to heaven, she exclaims, "I do not know him." How often has this court held that falsehood is one of the darkest badges of guilt? She denied all knowledge of the man who fled to her for protection; whom she had quartered in the city; by whom she had in part executed the cruel, bloody purpose of this infernal conspiracy. Put all these facts together, gentlemen of the jury, and how can you avoid the conclusion that she knew of this conspiracy and acted some part in it? The law is, that if she acted any part, however minute, she was guilty.

Now, you will observe that I have not referred to the testimony of Weichmann. But when you consider these facts in connection with his testimony and her solemn admission, you see the criminal stands confessed. O, that it were not so! How can you tolerate an attack on honorable men, who condemned her on testimony so conclusive as connected with a crime which Mr. Bradley in his argument has characterized in strong and eloquent terms of denunciation. I would not undertake to say that a jury had erred in convicting Mrs. Surratt under such circumstances.

Gentlemen, I do not speak disrespectfully of woman; you are all, like myself, probably, married men. A woman's weapon is her tongue. Charlotte Corday, it is true, with her own hand inflicted

the death-blow upon the fierce and bloody Murat. Jael, with her own hand, struck dead Sisera, who was an enemy to the chosen people of Jehovah. Helen Mar assumed the dress and wielded the sword of a knight, that she might fight by the side of the man whose virtue was proof against her wiles. But these are exceptions to the general rule. Her tongue, that sword of fire, is the weapon with which she sows the seeds of bloodshed and violence and discord. With her tongue did Mary E. Surratt stimulate these young men to crimes of blood and horror. Do you realize, gentlemen of the jury, the responsibility resting upon you? Here we are in the presence of gentlemen and ladies, perhaps of little boys and girls. You are educating public sentiment. I heard that remark made—and it impressed itself upon me—by a venerable old gentleman upon a case somewhat similar to the present. I call upon you as conservators of the public peace, as Christian men, to say to women, keep your place; submit to the laws of God and of your country; train your children to love their country as they do their God. But if you dare to raise your arm, to unsex yourself and engage in a conspiracy against the nation's life and the nation's honor, to make a widow of one of your own sex, to strike down the father and husband in the presence of his wife and child, I call upon this honest jury of my countrymen to spurn that spirit of mawkish sentimentality which would allow a crime like this to go unrebuked, and a great criminal to go unwhipped of justice. Vindicate the laws of your country, and maintain the integrity of the judicial ermine.

Mr. Merrick spoke at length upon the proposition laid down by the prosecution that a conspiracy to murder the President of the United States differed from other acts of conspiracy and which *Mr. Carrington* had embodied in the following language:

"That a conspiracy to kidnap, abduct, or murder the President of the United States, in time of rebellion or other great national peril, is a crime of such heinousness as to admit of no accessories, but such as to render all the conspirators, their supporters, aiders, and abettors, principals in the crime. That such is the common law of England, and is the law of this country."

I must confess that I listened to that proposition yesterday with infinite amazement, not to say much amusement and pleasure—amazement, that a lawyer of the reputation of the gentleman should advance such a doctrine, and pleasure, when I felt that he would not have periled his reputation by so monstrous and absurd a proposition, except as the last resort for a failing cause. Your honor, he says, dare not decide against it. My learned brother is a bold man if he dares to confront the profession after announcing such a rule as, in his opinion, the rule of English or American law. He is a brave man, for it takes a brave man to do such a thing as that. What does he say? I read from the Associated Press report of his remarks, which is a mere synopsis, of course. It will be observed, that in this report the expression to the effect that the court "dare not decide against the principle he enunciated" does not appear:

"It is the first time, said *Mr. Pierrepont*, that an opportunity was ever afforded to test the fourth point, for the fact seems to be lost

sight of that this whole conspiracy was for the purpose of overthrowing the Government; but neither the court nor jury could escape from that view of the case, and if this was considered only as an ordinary murder, the country would hold both court and jury responsible. It was a monstrous doctrine to enunciate, that if an abduction only was contemplated, and a murder ensued, therefore the conspirators to abduction were not guilty of murder."

The learned counsel maintained that proposition by this system of logic: The crime is so heinous, that there can be no accessories; and it is heinous, because the man killed was a President. And he tells your honor that it is your extraordinary privilege to enunciate from the bench, for the first time in America, this doctrine. Well, sir, he may regard it as a privilege; but, as the representative of this young man before your honor and this jury, I will say that we do not desire you to be exercising privileges or decorating your name by the enunciation of new principles. We demand that you discharge the duty of determining the law as it is, and we deny your right to make new law not heretofore announced in the country. He says it is the law of France and the law of England. As I said the other day, there is a class of gentlemen in the United States who, since the commencement of our late war, seem to have entirely lost sight of all the free and glorious traditions of our country, and abandoned all love for constitutional liberty, and become dazzled with the prospective glory of the stars and garters, titles of nobility and rank, crowns and diadems, and it may be that before the days of republican liberty are over we shall have to meet that class of men in order to preserve our Constitution. Ideas of monarchy and rank are growing among the people, and military satraps are being dazzled with the glitter of their stars and grow dizzy at their unnatural elevation. May it please your honor, the very dead of the Revolution—of the last war with Britain—and of the late war for freedom and constitutional independence, rise to condemn the gentleman and repudiate his doctrine. Give me the Constitution of my country and her ancient liberty, undimmed by the darkness of a single decoration and unsullied by the restraint of any tyrannical power. The President is a simple American citizen, the representative of the free people of America. The monarch of this country, grand and sacred beyond touch, and beyond reach of assault, is the embodied will of the people in the Constitution of the United States, our only emperor, our only king, is the Constitution of the United States. It is the only sovereign of the Republic, the supreme law of the land, representing the collected will of the people; and when that ceases to be the supreme law of the land, and we attach to individuals in office especial privileges, especial powers, and especial grace, we take away a part of the sanctity that belongs to that Constitution to give it to men. Sir, I will never consent to see my country thus dishonored. If I might venture to use the language of the gentleman, and did not feel that it was transcending the propriety of forensic debate, I would say your honor dare not sanction such a doctrine.

No man feels more keenly than I do the enormity of this great

crime, the disasters that it brought, and the disasters that it was likely to bring, committed by a parcel of inconsiderate and half run-mad individuals. But yet the consequences of a crime cannot change the nature of the crime in contemplation of law. If a captain at sea, with one passenger on board of his vessel, scuttles his ship and escapes from it, he is just as guilty as the captain of a steamship, charged with a thousand lives, who scuttles his vessel and sends the whole thousand to eternity. It is murder in the one, and it is murder in the other. And although the consequences of this crime might have been disastrous beyond the killing of an ordinary individual, yet, in contemplation of law, the killing was but the killing of an individual, and the charge is murder, and nothing but murder.

But, says the counsel, there are no accessories. What does he mean? There is but one crime known to the law to which there are no accessories, and that is treason. Are you trying the prisoner for treason? Gentlemen of the jury, are you sworn to try this as a case for treason? What is the law of treason? A party indicted for treason is entitled to a list of the witnesses against him. If my client is indicted for treason, why did you not furnish me with a list of that battalion of infamy that you brought into court? You indict the prisoner for treason, and hold him responsible for all the penalties incident to treason, and yet you deny him the right which he is guaranteed by the statutes of the United States in the case of treason. What more is he entitled to? To have the overt act of treason charged in the indictment proved by two witnesses. You indict for murder, and one witness is enough; in treason you must have two. Treason, your honor, in its practical application to an individual where he is indicted for it, has two features that mark it as distinct from every other crime. One is, that he is entitled to have a list of the witnesses against him; and the other is, that you must prove the act by two witnesses. Why did you not give me a list of witnesses when I called for them? If you meant to call this treason, which you made murder on your record, and meant to hold my client responsible for treason, when I called for that list, why did you resist it, keeping back the secret purpose to hold him responsible for treason, when you denied him the privileges that the law gave him if he was indicted for treason? It is dishonest; it is attempting to trick a man out of his life. Courts of justice were not made to play tricks upon individuals, and hang them by chicanery. You talk about public sentiment. The American Republic would revolt at such an idea, and the whole heart of the country would condemn such a piece of conduct and crush beneath the weight of its indignation any individual who would participate in so nefarious an outrage.

I have . . . shown your honor that from the earliest days down to the latest in England the principle for which we contend has been recognized, and the learned gentleman can find no case contravening it. What expedient is adopted in this emergency? He tells me that by the law of England to kill the President of the United States is so heinous a crime that there are no accessories.

Can he find a parallel case in England? Was anybody ever tried there for killing a President of the United States? No, sir. He may find a case of compassing the king's death. Has the President of the United States ever had his temples pressed with a crown? Is he the State? The counsel says he can find an authority in France. I grant it. To imagine the death of Louis Napoleon, by the laws of France, is treason. Is it treason here to imagine the death of Andrew Johnson? Is it treason here to wish his death? If it be—then, sir, when your grand jury meets, charge them to indict Thaddeus Stevens and all his entire corps of treasonable incendiaries. No, sir, it is not treason. We can wish and desire what we please in this free land, and our public men are open to the freest and severest criticism. If in the Corps Legislatif an individual passes censure on the emperor, what is the consequence? The president stops him, for the sanctity of the imperial person will not bear the censure of a private mouth. How is it here? Here, thanks be to God, we have freedom of speech, with a restored Constitution, temporarily suspended by usurping power, but once again in the possession of our people as the birthright of Americans. He may find you a case in France, and he may find you a case in England, where imagining or compassing the death of the sovereign is treason; but that is not a parallel case. The pride of our country is, that neither the anointed of man nor the anointed of the Lord claims political power by virtue of the anointment. Political power flows from the people, and is the gift of the people. Will he find me a case in England or in France where, except in revolutionary times, you may impeach the emperor or the king? To make the case parallel you must show that the same disabilities affect the people in the one country that operate in the other. In France, can the Corps Legislatif impeach the emperor? In England the Commons did impeach Charles—aye, sir, and the French Deputies impeached Louis, and the head of each answered to the impeachment; but it was the impeachment of passion, and not the impeachment of law. Does the learned gentleman think he could induce M. Thiers to bring forward a motion in the Corps Legislatif to impeach the emperor? Could he have an investigating committee to sit for almost twelve months out of the year, seeking for causes of accusation against the emperor? No, sir; these are republican luxuries, not imperial. There is no divinity that doth hedge with its sanctity the person of our President. The pride of our free institutions is that the President of the United States is, like a private man, our servant, fenced around by the hearts of the people, and sustained by the public approbation that put him in power. He claims no factitious authority; no factitious sanctity. The line of his duty is marked by the Constitution, the extent of his power is defined by law, and his relation to the people is well ascertained. If the gentleman cannot find in England any authority to controvert the principles I have laid before your honor, can he find any in America? I will show your honor that in the United States we have repeatedly, again and again, ratified and confirmed the principles which I have been reading from the English law.

THE TRIAL OF EMIL A. MEYSENBURG FOR BRIBERY, ST. LOUIS, MISSOURI, 1902.

THE NARRATIVE.

The legislative power of the city of St. Louis is vested in a municipal assembly composed of two bodies, a Council and a House of Delegates. In 1900 Emil A. Meysenburg, a stock broker, and prominent and wealthy citizen, was a member of the Council. In that year there was introduced in that body a bill granting to the St. Louis & Suburban Railway Co. certain valuable privileges and franchises which were referred to the Street Railway Committee of which Meysenburg was a member. Philip Stock was the legislative agent of the railroad and had charge in the interest of the company of getting the bill passed. In the first week of January, 1901, the bill having been in the Council since October 9, 1900, and meeting after meeting having taken place without any action, as appears by the Council records, Mr. Stock saw Councilman Kratz and asked him what was the trouble with the bill, why was it hung up? Mr. Kratz said "the trouble is Meysenburg; he is sore at you fellows." Mr. Stock said to him, "What does Meysenburg want?" Mr. Kratz said he would find out, and a few days after that Mr. Kratz came back to Mr. Stock and reported that Meysenburg had a grievance; that he had some stock in the St. Louis Electrical Construction Co., and he was sore on account of that stock in some way. On January 11th, Mr. Stock wrote to Mr. Kratz and asked him to ascertain what Mr. Meysenburg wanted for that stock if that stood in the way and he said "The stock is of no value, but in order to keep Meysenburg as our friend in this matter we will take the stock up if

necessary." A few days afterwards Mr. Kratz reported that Mr. Meysenburg demanded \$9,000 for the stock. Mr. Stock told Mr. Kratz that he would have to confer with Mr. Turner, president of the St. Louis & Suburban Railway Co., about it and would let him know later on.

Mr. Stock saw Mr. Turner and arrangements were made to raise the \$9,000. Mr. Turner went to the German Savings Institution, and got a cashier's check, which was payable to Philip Stock and E. A. Meysenburg jointly. Mr. Stock and Mr. Kratz went to Mr. Meysenburg's office; they found him waiting for them with the St. Louis Electrical Construction Co. stock, all signed and ready to deliver, two hundred shares. He also had a statement in writing that he had prepared. Mr. Stock said to him, "What is the trouble? Why are you fighting us so?" Mr. Meysenburg turned to Mr. Kratz and said, "Now, Charlie, there is no wrong attempt; you know I am honest and do not want anything but what is right." Mr. Kratz said, "That is right." He handed the certificates of stock (which were worthless) over to Mr. Stock and took the check for \$9,000. As Mr. Stock turned to leave Mr. Meysenburg said, "Now, Mr. Stock, I do not want you to think that this is going to influence my vote." Mr. Meysenburg took this \$9,000 check to the German Savings Institution and showed it to Mr. Hospes, the cashier of that bank, saying, "see that check? I have given value for that check." Mr. Hospes said, "Very well, I am very glad to know it."

The bill was now very speedily passed by the Council and sent to the House of Delegates when it encountered another difficulty.*

Meysenburg was indicted for accepting a bribe, the State contending that Stock paid him the money to influence his vote on the bill which was pending before the Council and that Meysenburg received it knowing that it was paid with that intention. And the jury agreed with this view. They found him guilty and sentenced him to imprisonment in the penitentiary for the term of three years.

* See Trial of Julius Lehman, *post*, p. 417.

THE TRIAL.¹

*In the Circuit Court, Criminal Division, St. Louis, Missouri,
March, 1902.*

HON. WALTER B. DOUGLAS,² Judge.

March 24.

An indictment had been previously found by the Grand Jury against *Emil A. Meysenburg*. It charged that he being at the time a member of the Council of the city of St. Louis there was pending before that body a bill giving to the St. Louis & Suburban Railway Co. certain privileges and franchises; that the bill was referred to the Railroad Committee of which he was a member; that one Philip Stock was the agent of the Suburban Co. in securing the passage of the bill; that he (Meysenburg) made an agreement with Stock whereby Stock paid him \$9,000 as the pretended value of some worthless and unmarketable shares of another company held by him, with the understanding that unless the \$9,000 was paid him by Stock he, as a member of the City Council, would oppose and defeat the bill.³

¹ *Bibliography.* See *post*, p. 419.

² DOUGLAS, WALTER B. Born Brunswick, Mo., 1851. A.B. Westminster College, 1873. LL.B. Harvard, 1877. Judge Circuit Court St. Louis, 1900-1906.

³ The Grand Jurors of the State of Missouri, within and for the body of the City of St. Louis, now here in court, duly impaneled, sworn and charged, upon their oath present, That on (or about) the thirtieth day of January in the year one thousand nine hundred and one, the said City of St. Louis was a municipal corporation in the State of Missouri aforesaid, and that the Legislative power of the said City of St. Louis was by law vested in a Council and a House of Delegates, styled the Municipal Assembly of St. Louis, the members whereof were elected by the citizens of St. Louis.

That at the said City of St. Louis and on (or about) the said thirtieth day of January one thousand nine hundred and one, one Emil A. Meysenburg was a public officer of said City of St. Louis, to-wit: a member of the said Council and of the said Municipal Assembly of St. Louis, duly elected and qualified, and was then and there acting in the official capacity and character of a

The Prisoner pleaded *not guilty*.

Joseph W. Folk,⁴ A. C. Maroney⁵ and C. O. Bishop⁶ for the State.

Frederick W. Lehmann,⁷ Chester H. Krum⁸ and Morton Jourdan⁹ for the prisoner.

member of said Council and of the said Municipal Assembly of St. Louis.

That there was then and there pending and undetermined before the said Municipal Assembly and in the said Council, and brought before said Municipal Assembly for the consideration, opinion, judgment and decision of the members thereof in the said Council, and before the said Emil A. Meysenburg in his said official capacity and character as a member of said Council and of said Municipal Assembly of St. Louis, a certain measure, matter, cause and proceeding in the nature of a proposed ordinance of the said City of St. Louis (designated and known as Council Bill No. 44) wherein and whereby it was proposed that the said City of St. Louis (by ordinance duly passed and enacted by the said Municipal Assembly and approved by the Mayor of said City) should grant certain valuable rights, privileges and franchises to the St. Louis & Suburban Railway Co. (a railroad corporation) and to permit the said railway company (among other things) to lay its railroad tracks and run its railroad cars in, upon and over certain designated public streets and highways of said City of St. Louis.

That it then and there became and was the public and official duty of the said Emil A. Meysenburg as a member of said Council and in his official capacity and character as aforesaid, to give his vote, opinion, judgment and decision upon the said measure, matter, cause and proceeding, and for or against the said proposed ordinance without partiality or favor.

That he, the said Emil A. Meysenburg, well knowing the premises, but unlawfully and corruptly devising, contriving, scheming and intending to prostitute, betray and abuse his trust and to violate his duty (as aforesaid) as a member of said Council and of the said Municipal Assembly, did, at the said City of St. Louis and on (or about) the said thirtieth day of January in the year one thousand nine hundred and one, unlawfully, corruptly and feloniously directly and indirectly solicit, propose, procure, accept and receive a certain gift, consideration, gratuity and reward, under an agreement that his opinion, judgment and decision, as a member of said Council and in his official capacity and character as aforesaid, should and would be more favorable to the passage and enactment of the said measure, matter, cause and proceeding and to the said proposed ordinance of the said City of St. Louis, then and there (as aforesaid) pending and brought before the said Council and before him, the said Emil A. Meysenburg, as a member of said Council, and in his said official capacity and character, and under an agreement that he, the said Emil A. Meysenburg, would and should perform his said public and

The following jurors were duly selected and sworn: Frank Ames, J. Bachman Brown, John C. Burr, Frank Casey, Jr., Elliott H. Chamberlain, Curtis M. Jennings, Nathaniel T. Lane, Lincoln K. Loy, Nelson W. McLeod, Thomas S. Maxwell, Paul Moll, George W. Sanders.

official duty in the premises with partiality and favor and otherwise than according to law.

That he, the said Emil A. Meysenburg, did then and there unlawfully, corruptly and feloniously, solicit, propose, procure, make and enter into a certain corrupt bargain, agreement and covenant with one Philip Stock (who was then and there the agent and representative of the said St. Louis & Suburban Railway Co., its officers and members, and who was then and there acting for and in behalf of the said St. Louis & Suburban Railway Co., its officers and members, as he, the said Emil A. Meysenburg, then and there well knew) by and under which said corrupt bargain, agreement and covenant a large sum of money, to-wit: the sum of nine thousand dollars lawful money of the United States, was paid to him, the said Emil A. Meysenburg, by the said Philip Stock as the pretended and ostensible price, consideration and value of certain worthless and unmarketable shares of stock of the St. Louis Electric Construction Company, then and there had and held by him, the said Emil A. Meysenburg, upon the express understanding and agreement between the said Philip Stock and the said Emil A. Meysenburg that unless and until the said sum of nine thousand dollars was so paid by the said Philip Stock to the said Emil A. Meysenburg, as the said pretended and ostensible price, consideration and value of the said shares of stock, he, the said Emil A. Meysenburg, as a member of said Council and in his said official capacity and character as aforesaid, would and should oppose, resist, withstand, thwart and defeat the passage and enactment of the said measure, matter, cause and proceeding and of the said proposed ordinance, then and there as aforesaid pending and brought before the said Council and before him, the said Emil A. Meysenburg, in his said official capacity and character as a member of said Council.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the state.

* **FOLK, JOSEPH WINGATE.** Born Brownsville, Tenn., 1869. Educated in public schools and graduated Vanderbilt University, 1890. Admitted to Tennessee bar and practiced in Brownsville for a year when he removed to St. Louis. Circuit Attorney St. Louis, 1900-1904. Governor of Missouri, 1904-1908. Solicitor Department of State, 1913-1914. General Counsel Interstate Commerce Commission, 1914.

* **MARONEY, ANDREW C.** Born Decatur, Ill., 1862. Educated in public schools of Decatur and Washington University Law School. Admitted to bar (St. Louis), 1894. Assistant Circuit Attorney, 1901-1904; 1913. Chairman Board of Election Commissioners,

THE OPENING SPEECHES.

Mr. Folk. Now, gentlemen, before we proceed with the evidence in this case it becomes my duty to tell you what the State expects to prove. We lay this before you in a very brief manner, without argument and without comment, simply to enable you to pass upon the evidence as it is adduced on the stand more intelligently.

It will appear first that the legislative power of the city of St. Louis is vested in a Council and a House of Delegates. It will appear that this defendant was a member of the City Council. It will appear that there was introduced in the Council of which this defendant was a member on October 9, 1900, a bill known as Council Bill No. 44, giving and granting the St. Louis & Suburban Railway Co. certain privileges and franchises; that there was in the Council a committee known as the Railroad Committee, of which this defendant was a member; this bill was referred to this

1905; 1906-1908. Vice-president Police Board, 1905-1906. Professor Criminal Law and Procedure, St. Louis University Law School.

* BISHOP, CAMPBELL ORRICK. Born Union, Mo., 1842. Graduated Westminster College, 1862. Washington University Law School, Louisville, Ky., Law School, 1866. Admitted to St. Louis bar, 1867. Assistant Circuit Attorney (St. Louis), 1883-1896; 1901-1904; 1913-1916. Circuit Judge, 1905-1907. Professor Criminal Law, Washington University Law School, 1894-1910. St. Louis University Law School, 1910-1917. LL.D. Westminster College.

* LEHMANN, FREDERICK WILLIAM. Born Prussia, 1853. Graduated Tabor College (Ia.), 1873. Admitted to the Iowa bar, 1873. Practiced law, Nebraska City, Neb., and later Des Moines, Iowa, until 1890, when he removed to St. Louis, where he is now engaged in active practice. President Public Library of St. Louis, 1898-1910. President American Bar Association, 1909. Solicitor General of the United States, 1912. Representative of President of United States at A. B. C. Mediation, Niagara Falls, 1914. LL.D. University of Missouri, 1907. Franklin and Marshall College, 1912. Washington University, 1914.

* See *post*, p. 500.

* JOURDAN, MORTON. Born Plattsburg, Mo., 1864. Admitted to Missouri bar (Chillicothe), 1884. Assistant Attorney General Missouri, 1893-1897. Removed to St. Louis in 1897, where he is engaged in legal practice.

committee. We will introduce in evidence the bill and Council proceedings showing that on October 9, 1900, the bill was introduced and read the first time. At the next meeting of the Council, which took place October 12, 1900, the bill was read a second time and referred to the Committee on Railroads. The next meeting of the Council was on the 19th of October, nothing was done with the bill. The next meeting of the Council was on the 26th day of October, nothing was done with the bill. The next meeting was on October 30th, nothing was done with the bill. The next meeting was on November 2nd, nothing was done with the bill. The next meeting was on November 9th, at that meeting of the Council a meeting of the Railroad Committee was announced for November 16th, at 4 p. m.; the next meeting of the Council was on November 13th; at this meeting a meeting of the Committee on Railroads was announced for November 20th, nothing was done with the bill. The next meeting was on the 27th of November, nothing was done with the bill. The next meet was on the 30th of November, nothing was done with the bill at that meeting. The next meeting was on December 4th, nothing was done with the bill. The next meeting was on the 7th of December, still no action on the bill. The next meeting was on December 11th, still no action on the bill. The next meeting on December 14th; a meeting of the Committee on Railroads was announced to take action on Council Bill No. 44 for December 21st, 3 p. m. The next meeting of the Council was on the 18th of December, no action was taken on the bill. The next meeting was on the 21st of December, still no action. The next meeting was on January 4th, 1901, no action was taken on the bill. The next meeting was on January 8, 1901, still no action on the bill. The next meeting was on January 9, 1901, still no action. The next meeting was on January 11, 1901, no action was taken on the bill. The next was January 15th, still no action. The next meeting January 18th, no action on the bill. The next meeting January 22nd, still no action on the bill. The next meeting on Jan-

uary 25th, Council Bill No. 44 was reported by the Committee on Railroads amended and it was reported without recommendation. The next meeting was held on the 26th of January, no action was taken on the bill. The next meeting was on the 28th of January, Council Bill No. 44 was laid over until February 1, 1901. The next meeting was January 29th, there was no action taken on the bill. The next meeting on January 30th, no action taken on the bill. February 2nd, the next meeting, Council Bill No. 44 laid over for one meeting on motion of Mr. Schnell. The next meeting on February 5th, Council Bill No. 44 was amended and ordered to engrossment. February 8th, Council Bill No. 44 was passed through the Council; motion to reconsider was made and motion to reconsider was laid on the table.

Now, it will appear when this bill was introduced one Philip Stock was the agent and representative of the Suburban Railway Co. to secure the passage of this bill. The crime set out in the indictment was made and took place at the office of Mr. Meysenburg on February 2, 1901; at that meeting there was present Mr. Stock, Mr. Mysenburg and Mr. Charles Kratz, a member of the Council who acted as the go-between between Mr. Meysenburg and Mr. Stock in this transaction. In the first week of January, 1901, the bill having been in the Council since October 9, 1900, and meeting after meeting having taken place without any action, as appears by the Council records, Mr. Stock saw Mr. Kratz, who, as I said, acted as the go-between in this transaction and whose interest in the bill will probably appear in the case, and asked Mr. Kratz what was the trouble with the bill, why was it hung up? Mr. Kratz said "the trouble is Meysenburg; he is sore at you fellows." Mr. Stock said to him, "What does Meysenburg want?" Mr. Kratz said that he would see and find out, and a few days after that Mr. Kratz came back to Mr. Stock and reported that Meysenburg had a grievance and that he had some stock in the St. Louis Electrical Construction Co., and he was sore on account of that stock in some way. On January 11th Mr. Philip

Stock wrote to Mr. Kratz and asked him to ascertain what Mr. Meysenburg wanted for that stock if that stood in the way and he said, "The stock is of no value, but in order to keep Meysenburg as our friend in this matter we will take the stock up if necessary." A few days afterwards Mr. Kratz reported that Mr. Meysenburg demanded \$9,000 for the stock. Mr. Stock told Mr. Kratz that he would have to confer with Mr. Turner, president of the St. Louis & Suburban Railway Co., about this figure and let him know later on. Mr. Stock saw Mr. Turner and arrangements were made to raise the \$9,000. Mr. Turner and Mr. Nicolaus went to the German Savings Institution, gets the cashier's check, which will be introduced here in evidence, and which was payable to Philip Stock and E. A. Meysenburg jointly; he goes to the Planters Hotel and there meets Mr. Kratz—before he went to the hotel, however, he telephoned Meysenburg that he was coming over without stating what purpose. Mr. Stock and Mr. Kratz thereupon went to Mr. Meysenburg's office; they found Mr. Meysenburg waiting for them with the St. Louis Electrical Construction Co. stock, all signed and ready to deliver, two hundred shares. He also had some sort of statement that he had prepared. Mr. Stock said to him, "What is the trouble? Why are you fighting us so?" Mr. Meysenburg said, "You people have not treated me right." Mr. Stock said, "We do not want any shares of stock; they are not worth anything, but in order to keep you as our friend we will pay you the \$9,000." Mr. Meysenburg turned to Mr. Kratz and said, "Now, Charlie, there is no wrong attempt; you know I am honest and do not want anything but what is right." Mr. Kratz said, "That is right." He handed the certificates of stock, which we will show you were worthless, over to Mr. Stock, and this statement and took his check for \$9,000. As Mr. Stock turned to leave and got to the door, Mr. Meysenburg said, "Now, Mr. Stock, I do not want you to think that this is going to influence my vote." But you will observe, however, from the evidence that he did not say that until he got the \$9,000. Mr. Meysen-

burg took this \$9,000 check down to the German Savings Institution and went out of his way to see Mr. Hospes, the cashier of that bank, he showed him the check and said, "Mr. Hospes, see that check?" Mr. Hospes said "Yes," he said, "I have given value for that check." Mr. Hospes said, "Very well, I am very glad to know it." The reason he did that will probably appear in the evidence.

Now, gentlemen, if we show you these facts, we show you, as the evidence will satisfy you, that Philip Stock paid these \$9,000 to Emil A. Meysenburg because this bill was before the Council, that Meysenburg was a member of the Council, because the bill was pending before Meysenburg in his official capacity, and Mr. Stock paid this \$9,000 to influence the official conduct of Mr. Meysenburg regarding that bill, and Mr. Meysenburg knew at the time the \$9,000 was paid to him that Mr. Stock did it for the purpose of influencing his official conduct and so knowing received it, then we have made out a case of bribery and corruption, which will justify you in returning a verdict of "Guilty."

Mr. Krum. Gentlemen of the Jury: A public officer of the city of St. Louis, whose office was conferred upon him by the people, stands confronted before this body charged with the commission of an offense which has been characterized by one of your judges of the Circuit Court as subversive of government itself, and naturally feels a degree of solicitude which it is exceedingly difficult for his counsel to adequately express in his behalf. He has, however, through the summoning of yourselves at his own solicitude obtained what he conceives a satisfactory method of demonstrating his own innocence. It is accordingly my duty to undertake to say to you in his behalf the line of testimony which will be followed for the purpose fully and completely exculpating the defendant from the consequence of this charge. There will be no attempt at characterization of anybody; there will be no attempt at even criticism. The facts merely will be stated, and they themselves will convey their own and at the same time the best argument.

The defendant is charged in the indictment with having made an express agreement which is set forth in the indictment, namely: that he agreed with Philip Stock to oppose the passage of the so-called Suburban Railway bill until he was paid the sum of nine thousand dollars for the stock. It may seem incomprehensible that an agreement of this description was made by anybody, either by a member of the Council or otherwise, but such is the charge. The charge is not that the defendant agreed with Philip Stock that he would vote for the Suburban Railway bill, provided he was paid the sum of nine thousand dollars or any other sum, but the charge is as I have stated it to you, that he agreed with Stock, and I ask you to consider this charge, that he agreed with Philip Stock that he would oppose the passage of the so-called Suburban bill until he was paid the sum of nine thousand dollars, and that in consideration of that agreement the sum of nine thousand dollars was paid to him.

Now, gentlemen of the jury, the facts as introduced in behalf of the defendant will completely demonstrate that this charge is utterly false from the beginning to the end. There never was any such agreement made either at the instance of Mr. Meysenburg or at the instance of anybody else; there never was such an agreement made between Meysenburg or anybody else on the face of the earth.

It is true that Philip Stock bought from Mr. Meysenburg two hundred shares of the St. Louis Electric Construction Co. and he paid Mr. Meysenburg for those shares of stock, not nine thousand dollars, but \$8,966 and some cents, the amount of money which was due Mr. Meysenburg by reason of transactions in which he had advanced that much money to persons who had become indebted to him by reason of that advance. So that at the threshold of the situation you will observe that the facts will demonstrate that there was no agreement made to pay Mr. Meysenburg the sum of nine thousand dollars, but that when Mr. Meysenburg came to part with his shares of stock he did receive from Philip Stock the amount of money which theretofore Mr. Meysen-

burg had advanced to other persons on account of the security of this stock.

It will also be shown to you, gentlemen, that from the very inception of this so-called Suburban bill, the opposition of Mr. Meysenburg to its passage was persistent and unrelenting; he opposed it in committee; he opposed it on the floor; he loaded it down in committee with amendments, as the evidence will show you that the party who drew it would not be able to recognize it; he voted against it every time it came up, and upon final passage he voted against it, and when it was moved as a mere matter of parliamentary practice to reconsider the vote upon the bill and lay that motion upon the table, Mr. Meysenburg's vote was recorded in the negative of the proposition, just as had been on every other proposition relating to the enactment of this measure.

Furthermore, gentlemen of the jury, it will be shown to you upon the theory of the State itself that Mr. Meysenburg's vote could not have been one to affect the passage of the bill. Now, if it be true, as has been asserted and doubtless will sought to be proved, that a large sum of money was deposited in escrow as it is so-called, or a deposit, for the purpose of buying votes in the Municipal Assembly or in the Council, by means of which to secure the passage of this so-called Suburban bill, it will appear that all the arrangements had been made by which all necessary votes had been secured either for a passage of the bill or for a passage of the bill over the veto of the Mayor in case such a mishap occurred, and this arrangement had been made. Everything had been provided for months before this alleged agreement between Stock and Meysenburg under which Mr. Meysenburg contracted upon the theory of the State to oppose the bill until he was paid nine thousand dollars; all the arrangements had been made by which the necessary votes were to be secured; all the details had been arranged; the money had been put up and all the details perfected, and all of that was absolutely without reference to the defendant at all. In other words they had provided for the necessary

vote, even over the veto of the Mayor, and this was done months before Mr. Meysenburg sold his shares of stock to Philip Stock, and consequently it was absolutely unnecessary as far as his vote was concerned, because the necessary votes had already been provided and secured.

You will observe that this indictment alleges that the defendant solicited this agreement; that may be or may not be material or essential, but the evidence will show you it was not Mr. Meysenburg who was the moving party, not Mr. Meysenburg who solicited from Mr. Stock the purchase of these shares, but it was Mr. Stock who was the moving party, Stock solicited the purchase. Not only that, gentlemen of the jury, but as Mr. Meysenburg conceived and as the evidence will show to your satisfaction Mr. Stock came forward as a member of what was known as the Kinloch Syndicate under which by reason of its peculiar operations Mr. Stock had become himself personally liable to the minority of stockholders of the St. Louis Electric Construction Co. and as Mr. Meysenburg conceived what Mr. Stock was endeavoring to do, the details of these facts, we will lay before you later on and will show to secure a release on his part from this possible liability to Meysenburg as one of the minority stockholders of the St. Louis Electric Construction Co., which Mr. Meysenburg, together with other minority stockholders of that company, claimed had been wrecked by the so-called Kinloch Syndicate of which Mr. Philip Stock himself was a member.

Now these shares, as I have indicated to you, were held originally by Mr. Meysenburg as collateral. The details of this transaction will show how that condition was changed with approval of the owners of the stock into an actual holding or ownership by Mr. Meysenburg, and accordingly when Mr. Stock came to Mr. Meysenburg with reference to purchasing these shares while he offered a check for nine thousand dollars, which amounted to \$45.00 a share, for the two hundred shares, Mr. Meysenburg at once told him, and by the way, you will observe the Circuit Attorney omitted this feature of

the case in his narration of what he expected to prove. Mr. Meysenburg at once called Mr. Stock's attention to the fact that he did not accept the sum of nine thousand dollars; he did not accept forty-five dollars a share for this stock, but that all he accepted was the amount together with interest to which, or to which the pledgers of this stock stood indebted to him, and accordingly right there in Mr. Meysenburg's office a calculation was made by his accountant, that calculation will be shown you in detail showing the amount by way of principal and interest due Mr. Stock, or to Mr. Meysenburg on account of the advances which he had made on the faith of these shares pledged with him some years before. That detailed statement when the check came to be paid he turned over to Mr. Stock, a copy of it being kept by Mr. Meysenburg, and Mr. Meysenburg then proceeded to pay to Phillip Stock the difference in money between the check for nine thousand dollars and the amount thus calculated by his own accountant in Mr. Stock's presence; he accepted the check but he turned back to Mr. Stock the difference in money between the amount of the check and the amount due by way of principal and interest due upon the loan which was made several years ago by Mr. Meysenburg upon the faith of the pledge of this stock. And having received this check Mr. Meysenburg went with it to the German Savings Institution upon which it was drawn, exchanged that check for a cashier's check for the amount of the principal and interest actually due him on account of his advances and received from the bank the sum of money which he had paid by way of change, if you call it so, to Mr. Stock himself.

Now, gentlemen of the jury, it is not my intention to comment at all upon the testimony which will be offered, but one cannot help in the reflection that had the defendant been determined to make a most complete and satisfactory case against himself, no one could be more painstaking in that regard than the defendant himself. The check Mr. Meysenburg received, as I have indicated, for the amount of money,

principal and interest which he advanced was deposited by him to his own account in the Boatmen's Bank.

Now, gentlemen of the jury, it is my duty to indicate to you more in detail the facts and circumstances upon which this explanation of the defendant will depend. Those details may perhaps be regarded as burdensome, but that I hope will result merely from the fact that there is a considerable number of them, and not merely from the fact that the occasion has arisen which necessitates their presentation.

Early in 1891, the defendant, Charles Sutter and those interested in the franchise of the St. Louis Underground Service Company, built a considerable line of subways in the city of St. Louis. They were unable to obtain satisfactory tenants for this subway, and they accordingly obtained a franchise to distribute electric light and power in the name of the Citizens Electric Light & Power Co., still existing and for a telephone system and other purposes. For the purpose of providing the company with premises upon which to erect the plant, Mr. Meysenburg bought a lot here in the City, paying for it himself.

Mr. Folk. We object to going into that transaction originating back ten years and having nothing to do with this case. The only question is what purpose was this money paid Mr. Meysenburg for. If it was paid him to influence his vote and he knew that it was so paid him, it is bribery. It matters not where he got the stock; it matters not whether he might have bought property ten years ago; it matters not whether the St. Louis Electric Construction Co. was the outgrowth of the Citizens Electric Light & Power Co. or not; the only question is, did Philip Stock at the time he paid the nine thousand dollars pay it to him for the purpose of influencing his vote upon Council Bill No. 44, pending before Meysenburg in his official capacity and did Mr. Meysenburg know that it was paid to him for that purpose. Furthermore, this evidence could not be competent unless something was said about it at the time of this payment, unless Mr. Meysenburg had a talk with Philip Stock about it, the evidence could not be competent in this case. Did it enter into the negotiations? If it did not, if the negotiations were simply for the stock in the Electric Construction Company, we cannot go back of that, and if we do go back of it it would simply be trying an equity case, and not a criminal case, and simply serves to confuse the minds of the jury and take their minds from this case. The question is whether or not he was paid to influence his conduct and

whether or not he knew he was so paid and if he did so, it was bribery.

Mr. Lehmann. I submit in a criminal case, where the very essence of the crime consists in the motive, that whatever illustrates the purpose of the defendant and whatever bears upon the question of his good faith is competent as evidence. This indictment charges a corrupt agreement made with respect to certain stock which was worthless and charges the stock transaction to have been entered into the giving of the bribe. I submit that it is competent to show that this defendant believed the stock to be valuable; that he had the best possible reason for believing it to be of the value which he was assigning to it, because he had paid that amount of money, one hundred cents upon the dollar; that that stock bears upon the question of his good faith; it bears upon his belief as to whether or not that stock into which he put his money had or had not value, and there is the first step, that stock having had value, and he putting money into it upon the faith of its value, that bears upon the question, and we will take the further step and see whether or not value had been taken out of that stock. But the question here is essentially of the motive and purpose of the defendant; if he dealt in that stock as valuable; if he dealt in that transaction in that way under the law and upon all equitable and just principles if there was value there, that was his motive.

Mr. Krum. The indictment alleges, and we assume that it is a substantial averment or otherwise it would not be in the indictment, the indictment alleges and we assume that the court will hold the state to the proof of the averment that as the pretended and ostensible price and consideration and value of the said shares of stock, Emil A. Meysenburg, agreed, as the pretended and ostensible price, consideration and value of certain worthless and unmarketable shares of stock of the St. Louis Electric Construction Company, then and there had and held by him, the said Emil A. Meysenburg, was paid nine thousand dollars. Now, if the court please, if that stock was valuable in the estimation of Mr. Meysenburg himself because of the transactions conducted by this so-called Kinloch Syndicate, if Mr. Stock himself was a member of the Kinloch Syndicate, which as Mr. Meysenburg claimed had wrecked the St. Louis Electric Construction Company, why it is not competent on the part of the defendant to show that the stock, although it may have had no market price, although it may never have been quoted on the face of the earth, yet did have a value, a litigated value, if you please, or a value to be enforced through litigation, but yet if Mr. Meysenburg assumed by reason of the circumstances that Mr. Stock was liable to him as a member of the Kinloch Syndicate, and Mr. Stock came for the purpose of relieving himself of that liability, why could not Mr. Meysenburg accept the value of the stock as it stood to him, namely, to the extent of the amount he had advanced? And, if the court please, if it be true that this Kinloch Syndicate had effected compromises with other stockholders in this, minority stockholders of the St. Louis Electric Construction Company, with Mr. Charles B. Stark,

purchased his stock on the full sum and paid him for that stock, with Mr. Brady for the amount paid by him, and Mr. Gause has today pending against the same members of the Kinlock Syndicate, Mr. Philip Stock included, looking to a recovery from these men because of their transactions which as Mr. Meysenburg claims wrecked the company, why is it not competent to show all these things for the purpose of determining whether Mr. Meysenburg was acting in good faith in disposing of these shares of stock?

Mr. Folk. This evidence will lead from one issue to another and will only serve to mystify the minds of the jury. That may be the purpose of it. It matters not what Mr. Meysenburg paid for this stock; it matters not whether it was given as a gift or whether he paid ten cents, fifty cents or a dollar; he may have paid full price. He may have taken advantage of the opportunity of the bill pending before him to hold all these people up and make them pay him the money; it does not make any difference what he paid for the stock; that is entirely immaterial. The only question is what was the value of the stock at the time if it had any value.

Now these gentlemen talk about a mysterious claim, against whom? Not against the Suburban Railway, which had the bill in the Council, against somebody else, the Citizens Electric Construction Company, away back yonder in 1891, that this man had a claim against this company and he makes Philip Stock pay that claim because Mr. Stock represented the Suburban Railway before the Council. I submit if that be true that would constitute no defense; he may have had a claim against some third person; the claim may have been good, but he was not justified in using his office, in prostituting his office, by collecting a claim against some third person.

Even if the claim was against the Suburban itself that would not justify him using his office to collect that claim any more than I would be justified if I have a claim against a man I have indicted or under indictment, having a claim against him to collect it by leading him to believe that he will get some official favor, any more than if the court, if a man had a case before the court and the court had a claim against the defendant, if the court were to allow him to believe he would get some official favor by paying the claim. It would be no defense that the claim was an honest claim, or the claim was just. On the statement made by counsel here, if it shows anything it shows a claim not against the people interested in the bill, but against some third persons and he is making people interested in the bill pay his claim because he had a bill in which they are interested before him; that is not a defense. Even if he had a claim against the people who had a bill before him and to collect it in the manner that he did, to collect it by exercising his official functions and by holding out the fact that the bill was before him in his official capacity and prostituting his office, it is improper and no defense to claim the claim was just. The only question is the question of bribery, we do not want to wander away from that issue; it matters not whether or not he had a claim against third persons; it matters not whether he had a claim against the parties interested

in the bill, the question is if he collected it in the manner described it would be bribery nevertheless and none of the statements would be any defense. Furthermore, it is no defense as to what he did after he got the money; he may have voted for it or opposed it; it matters not. If a judge on the bench takes money from a man who is before him it is no defense that afterwards he decided against him. That was Lord Bacon's defense when charged with bribery, he stated that his decisions were just and he decided against the man who gave him the bribe; that is no defense at all. Very frequently a man takes a bribe from both sides, and the fact that he decides against one bribe giver makes the matter public, because when a man gets favors he is not apt to tell. It matters not what he does afterwards, it would be in the nature of a self-serving act. It matters not what claim he may have had against the Citizens Electric Construction Co.; it matters not whether he had a claim at all; it does not concern this question of bribery.

Mr. Lehmann. Some matters are proven directly and others are proved by attending circumstances. There is no pretense on the part of the defendant that he had any claim against the Suburban Company. There is no pretense here that he was settling with the Suburban Company for any claim, and I wish to emphasize that the men composing the Kinloch Syndicate had as such nothing whatever to do with the Suburban Company or its affairs. It so happened that two members of that syndicate, Mr. Turner and Mr. Stock, were representing the Suburban Company before the Council. Mr. Turner was a prominent member of the syndicate, so was Mr. Stock. Mr. Stock was secretary of the Citizens Electric Light & Power Co. and also a member of the syndicate; he was one of the men with whom a contract was made by virtue of which they claimed that they bankrupted the St. Louis Electric Construction Co., that by reason of the operation in which Philip Stock took a direct part as a member of that syndicate, contracted with himself in a double capacity as an individual and as director of the St. Louis Electric Construction Co., they manipulated matters in such a way, they told the minority stockholders of the Electric Construction Co., who were not members of the syndicate, who were not directors, they told them, well the company is insolvent and your stock is worthless. We propose to show that the shareholders who were in the minority, who were not responsible for this condition, who were not on the directorate, who were not members of the syndicate, they did not accept that, and we propose to follow this up and show that the money was paid for this stock according to the interest which the minority holders had in the stock. We propose to show they bought a large amount of stock from Charles B. Stark and paid more money than Mr. Meysenburg considered the value of the stock, and he was not holding an official position. We want to show Mr. Meysenburg held the shares and honestly acquired them for value, and that it was acquired in companies not the Suburban, not connected with the Suburban, in which Philip Stock, who so far as I know, is not an official of the Suburban at all, but who was a mem-

ber of the Syndicate and as a member of the syndicate Stock bought up the stock wanting to get it out of the way. Stock did not want to be held accountable for it.

The charge in the indictment is a corrupt agreement. What was the purpose? What was the object in doing this? And all the circumstances of the transaction must be considered if we are to fairly and justly determine that. It is competent to show what occurred afterwards with respect to the bill and see if we can not make a consistent statement from the beginning to the end and by a consistent statement we propose to support by evidence that Mr. Meysenburg long before he was a member of the Council had advanced the money for which he got this stock; that he got this stock before he went into the Council; that the Kinloch Syndicate was formed before he ever went into the Council; that when it was announced that this Construction Company had been wrecked, the minority shareholders got together and accumulated their votes and put a man in there who went through the books and found out the true state of affairs and found out as they believed that the stock had value. We propose to go further and show that when that director thus elected had gone through the books of the company and discovered these facts that then in order to avoid a law suit they paid him this money and thereupon turned over memorandum that he had made and Mr. Meysenburg took memoranda and consulted counsel with respect to the matter, as to what his rights were.

We want to show that defendant dealt in this stock as having value for two reasons, first, he paid value for it, and second, because he had been advised by the very conduct of these people that they held it to be valuable; that they paid other people for it, that he had been advised by counsel that the stock had value; that the Kinloch Sydicate, the individual members, were responsible to the minority shareholders and he had a right to take payment of the claim and that it did not influence his official actions, and you can not get at the truth of the matter without showing all of the surrounding circumstances.

Mr. Folk. If Mr. Stock was not representing the Suburban, then he had no connection with the Suburban Bill and what difference does it make whether Meysenburg had a valid claim or not. If, on the other hand, Mr. Stock was representing the Suburban and the money was paid to Meysenburg to influence his official conduct and he knew it and accepted it under such circumstances, it would be bribery. It matters not what he may have paid for the stock or what mysterious transactions he may have had away back in the past; it matters not what he did after he got the money. If it was bribery, it was bribery at the time the money was paid and was not made less. The act was completed then whatever it was then, just as a man commits any other crime. What he does after the crime is not material, save and except such things as may be admissions on his part. What he may do after are in the nature of self-serving statements, so what he may have done after he had taken this money as a bribe is immaterial and it would be self-serving and I say the evidence that they propose to introduce is inadmissible.

Mr. Krum. We propose to show how Mr. Meysenburg became connected with these matters, with the holders of these shares of stock in the St. Louis Electric Construction Co., and then we will show the circumstances out of which or by reason of which it was claimed on the part of Mr. Meysenburg and on the part of the minority stockholders of the St. Louis Electric Construction Co. as far as we are advised that he and they all had enforceable claims against the members of the Kinloch Syndicate as it was called, which these minority stockholders insisted was conducting the affairs of the St. Louis Electric Construction Co. so as to wreck that company.

From the moment when the conclusion was arrived at as to what was to be done with reference to the stock in the St. Louis Electric Construction Co. on the part of the minority stockholders, when they learned what the facts were, insisted upon their claims, advised with counsel in regard to them, and were advised that they had rights which were enforceable against members of the Syndicate as individuals who brought the construction company to its untimely end, and instead of the stock being valueless it was of value and was so considered by Mr. Meysenburg and was so insisted upon by him together with all other stockholders. The connection will show that it was a continuous affair from start to finish.

Mr. Folk. My objection is that the evidence he proposes to submit will be incompetent. First; it appears from his statement that Mr. Stock was not representing the Suburban Railway Company but representing something entirely different from the Suburban company. If that be true then it matters not what claim Mr. Meysenburg may have it will throw no light on this transaction. Second, if Mr. Stock was representing the Suburban, as we claim, it makes no difference whether Mr. Meysenburg had a claim against some third parties or not; he was not justified in using his office to collect the claim. Third; even if that claim was against the Suburban itself he was not justified and it would be no defense for him in this case if he used his office to collect that claim against the very parties who had that bill there. Fourth; that even though all of these transactions may have taken place in the past, if nothing was said about them at the time this money was paid, if they do not enter into the negotiations at all, but if the negotiations were simply for the stock, nothing else, nothing was said about any Citizens Construction Co. or any claim away back in the past, it would not be material. Fifth; the statement made by the counsel is objected to as to the action of Mr. Meysenburg subsequent to receiving the money. What he did subsequent to that is not material except what he may have done that amount to admissions. Any act he may have done in the nature of a self-serving act is not admissible. A man can not take a bribe as an official member of a municipal corporation and save himself from prosecution and free himself from crime by voting against the bill afterward. When he takes the money the crime is complete; there is nothing he can do to wipe out the situation and free himself from crime. Furthermore, it is proposed to take an accounting between the different stockholders in that company. Now I say we can not go into this because it would be incompetent.

Mr. Lehmann. The supreme court has over and over again determined that where stock has no market value then you are to go into the assets of the company and determine from those assets what the value of that stock is.

Mr. Folk. Do you admit the stock had no market value?

Mr. Lehmann. I know August Gelmer was paid for it; I know Charles Stark was paid more than fifty cents on the dollar, so I suppose it did have a market value, because it had a selling market value to that extent; it had no market value in the sense that it was listed as the stock of the National Bank of Commerce is. It is true in a great majority of cases, nine out of ten corporations in this town have no market value in that sense, because they are limited corporations, their affairs are not generally known to the public and if they are not generally known they can not have a general market value. I know of some stocks that have no market value selling four or five times above par and have no market here at all, because the general public does not know the business of the company. Whenever a stock has no quoted market value, wherever it is not dealt in generally, then you go into the assets of the company necessarily and our Supreme Court has decided over and over again that the market price is only evidence of value and that it is true generally that the market price does not constitute value. The market price is evidence of value and not conclusive evidence, although it is regarded as the best evidence where there is no open market for the commodity.

The COURT. I will hear such evidence that goes to show the stock had value and evidence that Stock was acting with the defendant's knowledge in behalf of the Suburban Company.

Mr. Folk. What is your Honor's ruling as to the question of subsequent conduct?

The COURT. That it is wholly irrelevant.

Mr. Krum. Gentlemen of the Jury, when I was interrupted I made the statement as to what Myseburg did, he opposed the bill before it was up for final passage and opposed it when it came up for final passage and opposed the motion to lay on the table, and the motion to reconsider and no objection was made by the Circuit Attorney.

This relation of Mr. Meysenburg to the shares of stock in the St. Louis Electric Construction Company was brought about in this way as the evidence will show you. The Subway Company from its organization did not do the business that was expected and they organized other companies, that is Mr. Meysenburg, Mr. Sutter and the persons interested organized other companies looking to the use of subways laid and

the subways which were made later. Then, as you remember, which is part of the history of the City of St. Louis, in 1896, the Keys Ordinance was passed which required all down town telephone and telegraph companies to go under ground, to lay their wires under ground. Just prior to this, in order to secure Mr. Meysenburg for the advances which he had made in purchasing this lot, for which, by the way, he paid twenty thousand dollars, of his own money advanced to that company, the Citizens Electric Light and Power Company transferred all its assets to Mr. Meysenburg by way of security. Now a man by the name of Hanford organized this so called Syndicate which was composed of Charles H. Turner, Ellis Wainwright, Henry Nicolaus, Samuel M. Kennard, Philip Stock, Adolphus Busch, Mr. Breckenridge Jones, and various other well-known men, well-known members of this community. Part of the transactions of that Syndicate, of which Mr. Philip Stock was a member, they agreed to, and did organize, the Electric Construction Company, with a capital stock of six hundred thousand dollars, which purpose was to turn over to that company, and finally did bring about all of these assets into this company. Mr. Jones, as the evidence will show you, went to work examining the records of the Citizens Electric Light & Power Co. and came across the resolution pledging to Mr. Meysenburg all of the assets of that Company to secure the advances which he had made after the purchase of this lot and here the incident occurred under which Mr. Meysenburg, as the evidence will show, became the holder of these two hundred shares of stock, which he afterwards disposed of to Philip Stock; those shares of stock of the St. Louis Electric Construction Co. This left the property, which he bought in the first instance for twenty thousand dollars, and which had depreciated so largely in value that it was regarded as worth only ten thousand dollars and then this arrangement was made. Mr. Meysenburg was requested to take the lot at ten thousand dollars, which he did, and thereupon Mr. Hanford, Mr. Kobusch and Mr. Sutter each made his note to Mr. Meysenburg for \$3,333.33, that is for one-third of the

ten thousand dollars, and gave Mr. Meysenburg, as security for those notes, that is each one of the makers of the notes gave to Mr. Meysenburg, as security for his note ten thousand dollars par value of the stock of the St. Louis Electric Construction Co., that made thirty thousand dollars of the stock transferred to Mr. Meysenburg, as security for ten thousand dollars in notes. Subsequently, Mr. Hanford took up his note for \$3,333.33, through the agency of Mr. Ledley, who at that time was the engineer, as I understand it, who had charge of the construction of the Kinloch Telephone plant, and the ten thousand dollars of stock which was held by Mr. Meysenburg, to secure the Hanford note, was turned over to Mr. Hanford for his note; that left Mr. Meysenburg the holder of two hundred shares of stock of the St. Louis Electric Construction Co., to secure the two notes of Sutter and Kobusch. Subsequently, Mr. Sutter induced Mr. Meysenburg to hold those notes, and hold the stock, and agreed that this stock should be taken up and the amount advanced on it paid within a year. That arrangement Mr. Sutter was unable to carry out and Mr. Meysenburg continued to hold the stock as collateral for this indebtedness of ten thousand dollars. At that time, it amounted to something in the neighborhood of seven thousand dollars, and then it became reported that the St. Louis Electric Construction Co. was insolvent, that instead of having any assets it was indebted, and that all its property had been pledged to secure that indebtedness, but the shareholders of this Construction Company who were not members of the Kinloch Syndicate got together under the statute, accumulated their votes, and elected Mr. Charles B. Stark as a member of that company, a director and stockholder, caused an examination of its books to be made, books and records. That examination satisfied Mr. Stark, as we will show, and satisfied all of the minority stockholders of the company who had knowledge of the result of his investigation, that the Kinloch Syndicate, who were at the same time directors of the Kinloch Telephone Co., and directors of the St. Louis Electric Construction Co., had so manipulated the affairs of the St. Louis

Electric Construction Co. that all of its assets in the shape of those various franchises had been acquired by the Kinloch Telephone and had been paid for and had paid themselves, and accordingly, Mr. Stark indicated to the members of that Syndicate that if the amount of money which he had paid for his stock in the St. Louis Electric Construction Company was not paid to him, that he would institute proceedings against them for the purpose of enforcing liability which existed, as he had seen it as a lawyer and as a member of the minority stockholders of the Construction Company, and accordingly a committee was appointed by this Syndicate, and through that committee this Syndicate, as we contend, recognizing its liability to Mr. Stark, took up the entire amount of stock and paid him every dollar that he himself had paid in for that stock. Now upon Mr. Stark effecting that settlement, as we will show you, the details of the transaction were communicated from him to Mr. Mysenburg, who was also a holder of these two hundred shares of stock in this company, upon the basis of that information, Mr. Meysenburg sought legal advice, some two years before he finally disposed of this stock to Philip Stock, and he was advised that he stood in the same position as Mr. Stark; that he had a complete remedy against these wreckers, as it was claimed of the Construction Company. It was proposed at that time to sue, the material was placed in the hands of counsel, but was mislaid in some way, and the matter hung fire, and the suit was not brought. Mr. Gauss, as will be shown, was also one of the members of the minority stockholders in this corporation, and he threatened these people with suit upon the same claim as was advanced by Mr. Stark, and finally did bring suit and that suit is now pending. Mr. Brady was a stockholder and insisted on his stock being taken up and it was taken up by August Gehner. Mr. Meysenburg, as the facts will show you, contended all the time that by reason of holding this stock he had a complete claim against these members of the Kinloch Syndicate, one of whom was Philip Stock, and another was Charles H. Turner, and when Mr. Stock came to Mr. Meysenburg for the purpose

of buying these shares, the evidence will show you, that Mr. Meysenburg relied upon the fact that Mr. Stock was coming forward to take up his liability and relieve himself of any liability.

The evidence will show not one word was ever understood between Philip Stock and Mr. Meysenburg as to the Suburban Bill, not one word either by Mr. Meysenburg or by Mr. Stock, that in consideration of the purchase of these shares of stock by Mr. Stock that Mr. Meysenburg would or would not vote for the Suburban Bill. There was no understanding upon the subject, no agreement upon the subject. And all that Mr. Meysenburg had in his mind was the assurance that Mr. Stock came forward in behalf of his fellow members of the Syndicate for the purpose of relieving himself and them of any liability of the minority stockholders of the St. Louis Electric Construction Co.

It will be shown you that the purpose of the so-called Syndicate, they being stockholders and directors at the same time of the Kinloch Telephone Company and the St. Louis Electric Construction Co., to so manipulate the affairs of that construction company was to turn over all its assets, good, bad and indifferent, to themselves, and as a consequence to leave the company in which they were directors an insolvent and valueless concern.

So that, gentlemen, the evidence will show you, that the purpose on the part of Mr. Meysenburg was not to exact a bribe from Mr. Stock or from anybody else; it was not to betray or prostitute the trust that had been reposed in him by the people of the city of St. Louis when they elected him to office, but what he did was honestly done and was done merely because he recognized as he conceived, because he had been advised and as his counsel conceived, and among them was Frederick N. Judson,—he recognized and his counsel recognized and advised him that he had a complete and subsisting claim against these individuals, and when Philip Stock turned up for the purpose of buying these shares of stock Mr. Meysenburg assumed, as he had a right to assume, Mr. Stock was

simply discharging himself from a liability which existed against him, together with his fellow members of the so-called Kinloch Syndicate.

Now, gentlemen of the jury, it will be shown what defendant's career has been here in the city of St. Louis from the beginning to the end, that he has conducted himself in all his relations, business and otherwise, from 1866, when he was paying teller of the United States Treasury, from 1867 to 1872, when he was chief clerk and acting treasurer, assistant sub-treasurer of the United States here in the City of St. Louis. In 1872, when he became cashier of the German American Bank; in 1882, when he became cashier of the Water Rates office, and from 1883 to 1889, when he was teller of the Boatmen's Bank, resigning in 1889, to go into business on his own account; it will be shown you through all this long period, when he occupied these responsible positions, which brought him prominently and immediately before the people of this community, that there was not one breath of suspicion, with reference to him. He enjoyed, as he had down to the very day when this indictment was filed, in the highest possible degree, the confidence and respect of the people in this community.

THE EVIDENCE FOR THE STATE.

Mr. Folk offered in evidence certain sections of the statutes creating the Council and enumerating the provisions for members taking the oath, the manner of recording the proceedings, etc.

Mr. Lehmann said the defense would admit that Meysenburg was a member of the Council during the entire period referred to in the indictment, and that he was a member of the railroad committee for the same period.

George F. Mockler. Am secretary of the City Council; the journals of the Council show the progress of the Suburban Railway bill, known as Council Bill No. 44, from its introduction on October 9, 1900, by Mr. Carroll, up to February 8, 1901, the date of its final passage. The journals show that action had been delayed on the bill through thirty-two sessions.

Council Bill No. 44 was then introduced and read. It was entitled "An act to authorize the St. Louis & Suburban Railway Co. to extend its lines and to construct, maintain and operate its railway along certain streets in St. Louis."

Philip Stock. Am secretary of the St. Louis Brewery Association.

Mr. Folk. What connection did you have with the Suburban Railway bill?

Mr. Lehmann. Any connection the witness might have had with the Suburban people could not connect the defendant with the transaction. The indictment averred that the defendant had made a corrupt agreement with the witness, and the state had as yet not proven that agreement, but was trying to introduce evidence to substantiate the averment that such an agreement existed. The connection of Stock with the Suburban people was a transaction between a second and a third party, and it is not shown that the defendant knew of that transaction. Such testimony was clearly incompetent.

Mr. Folk. The testimony is material, for the state will show later on that Meysenburg knew of the transaction between Stock and the Suburban people, and that when Stock made the agreement with him to vote for the bill Meysenburg knew that Stock was the Suburban's representative.

Mr. Krum. The state must first prove the agreement between Meysenburg and Stock before it can introduce any evidence to substantiate that allegation. The state has not as yet established the *corpus delicti*—the main issue of the indictment. It can not, before this is established, introduce any evidence tending to substantiate the main issue, but which, standing alone, would not establish it.

JUDGE DOUGLAS said he would look up the authorities quoted and render a decision in the morning.¹¹

March 25.

JUDGE DOUGLAS. The objection taken by the defense yesterday to the question asked witness Philip Stock is overruled.

Mr. Folk. Did anyone ever employ you in getting through the Suburban bill?

Stock. Yes, sir. Mr. Turner, president of the Suburban Railway. The bill was not in the Council at the time.

Mr. Folk. These two certificates of stock in the St. Louis Electrical Construction Co., Nos. 53 and 54, for 100 shares each, to Emil A. Meysenburg, have you seen them before?

Stock. I have. I got them

from Mr. Meysenburg on the 2d of February, 1901, at his office.

Mr. Folk. This check for \$9,000, dated January 30, 1901, payable to the order of E. A. Meysenburg and Philip Stock, signed by R. Hospes, cashier of the German Savings institution, and endorsed by Meysenburg and Stock, have you seen this before?

Stock. I have. I received it from Mr. Hospes and turned it over to Mr. Meysenburg at the

¹¹ After the adjournment of court a conference was held between the counsel and JUDGE DOUGLAS to determine whether to dismiss the jury or keep it in confinement. It was decided to allow the jurors to go home, and they were dismissed after being cautioned by the judge.

time I received these 200 shares. I got the check on the morning of February 2.

Mr. Folk. Please tell the court and the jury the whole transaction whereby you acquired from Mr. Meysenburg these 200 shares of stock and gave him that check for \$9,000.

Stock. Mr. Kratz, of the City Council, was present with me during the whole interview. I telephoned Mr. Meysenburg on February 2 that I would like to meet him between 10 and 11, and the answer came back that he would be in. Mr. Kratz and I went over to Mr. Meysenburg's and Mr. Kratz said, "Mr. Stock is here to settle for those shares." I stated I understood our people had not treated him properly, and I wanted to show we do by paying the amount asked, although the shares were of no value. He then turned to Mr. Kratz and said, "Charlie, you know very well I do not want anything but what is fair and square; I merely want to get the money which I laid out." He then handed me a statement and these shares, stating he had ex-

pended so much money. Did not look at the statement at all and handed him over the check, and he gave me the balance between the statement and the check, which was about \$33.42, I believe; he gave me that in currency. I was about leaving when Mr. Meysenburg said to me, "Now, Mr. Stock, I want you to strictly understand that this is a strict business transaction and that it will not influence my vote respecting the Suburban bill." Then I left with Mr. Kratz. He made that last statement after I gave him the check. Did not know what was the value of these shares at that time. Our conversation did not last more than five or ten minutes at the outside. Mr. Kratz did not say anything except when he said, "Here is Mr. Stock, who will settle for those shares. Nobody else was present during that interview. The office was open and some clerks were in the other office. Had no conversation at any time before that with Mr. Meysenburg in reference to paying him \$9,000 or getting this stock. I went at Mr. Kratz's solicitation.

Mr. Folk. What did Mr. Kratz say?

Mr. Lehmann. I object. The statements between Mr. Kratz and Mr. Stock cannot be competent here unless they are brought home to Mr. Meysenburg.

Mr. Folk. The evidence shows so far that Mr. Kratz solicited Mr. Stock to go to Mr. Meysenburg to pay him this money and take this stock. It shows that Mr. Kratz and Mr. Stock went together. When they got to Mr. Meysenburg's office Mr. Kratz introduced the subject to Mr. Meysenburg, saying, "Here is Mr. Stock, come to take up those shares." They found Mr. Meysenburg ready and waiting for them. It appears that this witness had had no prior communication with Mr. Meysenburg about the shares of stock or the \$9,000. Enough has appeared to satisfy the court that Mr. Kratz acted as a go-between in behalf of Mr. Meysenburg for the sale of these shares of stock. Now what Mr. Kratz did in that

connection is certainly competent to explain the whole transaction, if he was the go-between in the matter.

The COURT. The objection is overruled.

Stock. He said it was better to have Mr. Meysenburg's good will, and therefore we should satisfy him by buying these shares.

Stock. I said to him, "Well, I've got to report to Mr. Turner first before I can say anything." I said to him that the shares were not worth anything, but that he had lately paid Mr. Brady \$10.00 a share, and I was perfectly willing to pay the same amount for Mr. Meysenburg's holdings. I met Mr. Kratz one day in January, and I asked him whether he knew of any reason why the railroad committee wouldn't report our bill. He said he did not, but would find out. A few days after he came to me and stated that Mr. Meysenburg was dissatisfied, that the people seeking this franchise had not treated him properly in relation to some shares which he held in the Electric Construction Co., which was the first information that I had that Mr. Meysenburg held shares in that. Then I wrote to him (Mr. Kratz) January 11th to find out what he would take for his shares; that I considered the

shares valueless. Next saw Kratz a few days after January 11. He said Meysenburg wanted \$9,000. I told him I couldn't give him any answer until I saw Mr. Turner. The bill was at that time in the Railroad Committee, composed of Mr. Wiggins, Mr. Hodges and Meysenburg. I telephoned Kratz on the 29th day of January and asked him to meet me at the Planters' House on Saturday, February 2, and that I wanted to go with him to Mr. Meysenburg and settle for those shares. We met at the Planters Hotel and we both went over to Mr. Meysenburg's office. I never had any dealings with Mr. Meysenburg or any communication with Mr. Meysenburg regarding the shares of stock and the \$9,000 except through Mr. Kratz. The Railroad Committee of the Council before whom this bill was pending were Mr. Wiggins, Mr. Hodges and Mr. Meysenburg.

Mr. Folk. Why was it you went to Mr. Kratz to find out about this bill. He was not a member of the Railroad Committee?

Mr. Lehmann. I object to the question upon the ground that the motives of this witness were not disclosed to the defendant and cannot be evidence against him.

Mr. Folk. I ask that the jury be retired; I want to be perfectly fair to the defendant, and possibly it would not be just to the defendant in the presence of the jury to state what we propose to prove. I therefore ask that the jury be retired.

(The jury having retired.)

Mr. Folk. We propose to show Mr. Kratz's relation to this bill; to show that shortly after the bill was introduced Mr. Kratz came to Mr. Stock and demanded \$75,000 to pass the bill through the council. After some negotiations between Mr. Stock and Mr. Kratz

it was agreed that Kratz should receive \$60,000, for himself and some associates, when the bill was passed by the council and approved by the mayor; that Kratz told Stock he would send Brinkmeyer, who was acting as Kratz's agent; that the money should be put up in the Mississippi Valley Trust Co., Stock to hold one key and Brinkmeyer the other for Kratz; that Stock thereupon did go to the German Savings Institution—a previous arrangement having been before made for the money to get the \$60,000, and that Brinkmeyer came to the Mississippi Valley Trust Co. and put it in a lock box, Stock holding one key and Brinkmeyer the other for Kratz; that Kratz was anxious to see the bill pass as the result of that transaction; that he was working earnestly with the different members to pass the bill; that he struck an obstacle here and that the bill was hung up for an unusually long time in the Council. When Stock asked Kratz what was the trouble, he said it was Meysenburg, that Meysenburg had to be fixed, that he had to get him as their friend, as he was the obstacle, he was the trouble. This is for the purpose of throwing light on the transaction, showing Kratz's interest in the matter, and explaining the action that Kratz took—throwing light on the entire transaction.

The COURT. This is relevant against this defendant because of the knowledge that this defendant showed of Kratz's interviews with Stock at the time the stock was transferred.

Mr. *Lehmann*. Mr. Folk, do you mean by this statement in your offer of proof to suggest that Mr. Meysenburg was one of the parties who was included in that arrangement of sixty thousand dollars?

Mr. *Folk*. No, I do not mean to state either affirmatively or negatively, but we do suggest that Mr. Meysenburg knew of this arrangement and that throws light upon the dealing with Stock subsequent to that. We will have to prove that largely by circumstances. Another reason why this is competent, I will say here; Mr. Meysenburg got this check and went to Mr. Hospes; on his way to show Hospes this check he said to him, "You see this check, Hospes?" Hospes says "Yes." Meysenburg said, "I have given value for this check." The other transaction would throw light as to why Meysenburg did that. The sixty thousand dollars came from the German Savings Institution; Mr. Hospes himself turned that over to Mr. Stock. Meysenburg knew that Hospes knew Stock and that Hospes knew of this former transaction, and in order to avert suspicion from himself he makes this statement to Mr. Hospes.

JUDGE DOUGLAS sustained the motion of the prisoner's counsel and the *Jury* returned into the court room.

Stock. I represented Charles H. Turner only in the \$9,000 transaction. Did not know the value of the stock, but considered it valueless.

interested in any way in the Suburban Railway Co. Was a director in the St. Louis Construction Co. and member of the Kinloch Syndicate.

Cross-examined. Was not Richard Hospes. Am cashier

of the German Savings Institution; identify the \$9,000 check, payable to Stock and Meysenburg. The check was drawn by Stock, who gave me, to secure it, a note signed by Charles H. Turner and Henry Nicolaus, and instructions to turn the proceeds over to Stock. On February 2, 1901, saw the check in Meysenburg's possession, and he told me he was going to deliver stock for it. Meysenburg deposited the check and received a cashier's check for \$8,966.58.

Cross-examined. As to the reputation of Meysenburg for hon-

esty and uprightness, it is very good.

Charles H. Turner. Am a banker and am president of the Suburban Railway Co., and was so when Council Bill No. 44 was pending in the Municipal Assembly. Philip Stock represented the company as its legislative agent. I signed the note for \$9,000.

Mr. Folk. Why was the note executed by you and put in the German Savings Institution, and what did Stock say to you in reference to Meysenburg at that time, and the necessity of putting up \$9,000?

Mr. Lehmann objected that this was incompetent, because it was hearsay, and it was not shown the defendant had any knowledge of the conversation or transaction between Stock and Turner.

The COURT sustained the objection.

Mr. Turner. The directors of the Suburban Railway Co., in 1900 and 1901, were Ellis Wainwright, S. M. Kennard, Henry Nicolaus, Clark H. Sampson, Marquard Foster, T. M. Jenkins, James P. Dawson and myself. Have known Mr. Meysenburg for many years, had had no business connection with him as president of the road and do not know if he knew that I was president.

(The witness was not cross-examined.)

William R. Hodges. Was a member of the City Council and of the Railroad Committee when the Suburban bill was pending. In January, 1901, at a meeting of the committee in Meysenburg's office to consider the Suburban bill, Meysenburg told me and Mr. Wiggins, the third member, that he had a claim against Turner and others

interested in the Suburban road, whose names I do not recall, concerning a transaction of some years previous. Understood Meysenburg to say he had advanced money to purchase a lot. He said he would demand payment of the claim by Turner and the others. I told him that, considering the fact that the Suburban bill was pending in the Council, and in the Railroad Committee, of which he was a member, I considered it indiscreet of him to push the claim for payment; that if I was similarly situated I would put the claim in the hands of a lawyer.

Cross-examined. Meysenburg had not said the claim was against the Suburban road, but against Turner and others, whose names I can not recall. I now recall that he mentioned the name of Charles B. Stark in some way in connection with the transaction out of which grew

IX. AMERICAN STATE TRIALS.

his claim. I favored the bill after it had been amended to my satisfaction; do not remember that defendant opposed the bill in committee; cannot recall that he asked that the bill be reported without recommendation.

William F. Nolker. Live in St. Louis; am a brewer; was a director of the St. Louis Electric Construction Company in February, 1901. The shares at that time were worth nothing. The company had nothing but debts and no money.

Cross-examined. Am a member of the Kinloch Syndicate. Have known defendant for twenty years. Never heard anything against his reputation for honesty and upright conduct.

Charles Wiggins. Was a Councilman and chairman of the Railroad Committee when the Suburban bill was pending.

Meysenburg spoke to me half a dozen times about his claim against people interested in the bill; that he had sold them some stock of the St. Louis Electric Construction Co., which they had refused to pay for; that he had been approached with an offer to settle his claim. I told him his method of collecting the claim was, in my judgment, indiscreet under the circumstances. He did not mention Kratz in connection with the claim or its settlement.

Cross-examined. Meysenburg did not oppose the bill in committee. He said the consent of the property owners should be obtained before the bill was passed. He also suggested the bill being reported without recommendation. I had charge of the bill and did most of the work on it.

Mr. Lehmann. I have already in the course of my objections to the testimony expressed to the Court my view of the charge contained in this indictment and I submit that the most careful analysis that can be made of it will result as I have suggested, that the offense which has form and body as described in this indictment is the agreement with Philip Stock as the representative of the Suburban Company to pay him as the pretended price and consideration of worthless stock the sum of \$9,000 upon the express understanding and agreement that unless and until that was paid Meysenburg would and should oppose the passage of that bill. The agreement stated is a peculiar one, one it would seem difficult perhaps of comprehension, there is no negative appended to it, there is no alternative presented in the charge in the indictment. In other words, unless and until it was paid he would oppose that bill. But there is no statement that if he was paid he would alter his attitude with respect to it.

The very nature of the offense charged implies corruption. It is not a conventional offense; it is not like the violation of the revenue laws, where the fact alone becomes material and the offense is altogether immaterial. This offense is wrong in itself, the statute recognizes it to be so and the common sense of mankind; it is wrong because the commission of the offense implies a corrupt heart and a corrupt purpose. And there can be no guilt of this offense unless there be a corrupt heart and a corrupt purpose. The Court

has excluded some testimony that was offered with a view of showing that these shares had value in fact; but without regard to that if Mr. Meysenburg believed them to have value and dealt with them in that view then he was getting his money from people who, in his judgment and opinion, were responsible to him for them; then, while he may in the language of Captain Hodges have been indiscreet, still he was not guilty of the offense.

And I call attention to the fact that here are two men of good sense in this community, members of this committee with Mr. Meysenburg to whom he seems to have expressed himself freely, and the criticism, and the only criticism that they express on his conduct is that he ought to put the matter in the hands of an attorney and tell him to bring suit. Now I submit that if he had a right to do that, he had a right to get his money without suit. There would be nothing different if he had brought suit and if the people against whom he brought suit, or any of them—because there were a number of implicated members of the Kinloch Syndicate—had paid the money, and he had accepted it. In short it comes down simply to this so far as the face of the matter is concerned: did Meysenburg believe he had a just and valid claim against these people, then the fact that he accepted payment without suit instead of pushing a suit against them is entirely immaterial. We have to have much more than that to establish before we can read the conclusion of guilt under this indictment. The agreement must be proved as alleged. Now what was the proof with respect to that? The only testimony is that of Mr. Philip Stock, who is the only witness that testifies directly to the making of any kind of an agreement, arrangement or understanding whatever with the defendant. His testimony is, not that he was solicited by Meysenburg, but on the contrary that he was the moving agent himself, and that he went to Kratz and asked why that bill was held up; and it was suggested that it was held up by Meysenburg. Wiggins testified explicitly that he had the bill in charge on account of his long experience in the City Council; that he undertook to put in the amendments and from time to time submitted the matter to his colleagues who approved what he had done. So that there is positive evidence here, introduced by the State itself, absolutely excluding the idea brought forward by the prosecution that this bill was held up by Meysenburg. That was the purpose for which they brought the record here, to show this bill was pending from September until January; that there were many meetings of the Council at which no action was taken with respect to the bill; testimony that had absolutely no weight whatever; that could not establish what they contend for in that respect, because it is the common knowledge of all of us that a great many bills come into the Municipal Assembly, come into the Legislature and come into Congress that are not rapidly passed. Furthermore it is the judgment of many people that they ought not to be rapidly passed; that there is too little consideration instead of too much, too much haste rather than too much delay in legislation. But to take Stock's

testimony, he went to Kratz and said, "Why is this bill being delayed?" Kratz said that Mr. Meysenburg was not in a good frame of mind; that he had a claim of some kind about this stock, and if they wanted to put him in good humor and wanted to avoid ill will on his part they had better see him. Stock says he arranged a meeting and went with Kratz to the office of Meysenburg, and he states, and he alone states what occurred there. He states that when he went there he said he had come to get those shares and to pay for them; that the shares were produced; that with them a statement which Meysenburg said represented what he had paid for them; that the check was handed over and indorsed, and that Meysenburg gave him the money for the difference between the amount of the check and the amount of the statement, which represented the indebtedness, namely, the stock originally, with interest added; that this ended the transaction except that Meysenburg said, "this has nothing to do with my action with reference to the Suburban bill." Stock testifies that there was absolutely nothing said by him with respect to the Suburban bill; nothing said by him with respect to the Suburban Company; and he was not, except as he was acting for the Suburban Company with respect to this bill, an officer or a representative. The stock was turned over indorsed in blank and it may be transferred as Mr. Stock's stock was transferred; we know nothing about it; or no transfer effected as yet.

Now the question is whether the testimony of Stock as to the occurrence in Meysenburg's office constitutes an express agreement and understanding on the part of them both that unless and until this were paid he would oppose the bill. Now it is not charged that thereafter he was not opposed to it as charged in the indictment describing the offense; but that the money was paid under the express understanding and agreement between Stock and Meysenburg that unless and until it was paid he should oppose the bill.

When was that agreement made? It clearly was not made at that time; there was no express agreement, because the Suburban Company was not mentioned, the Suburban bill was not mentioned, Meysenburg's official opposition was not mentioned, his official action was not alluded to in any way; and yet you are asked to hold that the testimony establishes an express agreement, not an implied agreement, because the distinction between the two is as broad as that between day and night. The agreement if you are to imply it, if you are to say that Meysenburg knew from other circumstances that have been offered in evidence, that Stock's purpose was to influence his official action, and that he assented to that purpose, is in face of the fact that at the very time while Stock was there he said that it should have nothing to do with his action. The prosecuting attorney states that this was stated afterwards, after the payment was made. A check in itself is not payment; a check in itself is a mere piece of paper. All that was not part of the *res gesta*, for that was not a part of the transaction. Then there was no allusion whatever to the Suburban bill, then

there was so far as there was any expression, so far as there was anything specific, there was an absolute exclusion of the idea of an express agreement that his action with respect to that bill would be influenced by the payment of that money. Now you can take either horn of the dilemma, either that it was a part of the transaction or that it was not. I think that is the fact, because payment is not complete when a check is given; Philip Stock could have gone to the bank and stopped payment upon that check the moment that he heard Meysenburg say, "This is to have nothing to do with my action on the Suburban bill." He could have stopped payment instantly; the payment was not complete; the transaction was not at an end. Taking this as part of the transaction between the parties and going in as a part of it, as it is positive proof of an express agreement to the contrary, expressly excluding the idea of an understanding or agreement that he was to do this particular thing. Then if you leave it out I say you are brought to the other alternative. If you leave it out then there was no allusion to the Suburban Company, no allusion to the Suburban bill, no allusion to this official actions; and how can you predicate an express agreement involving the Suburban bill or the official action of Mr. Meysenburg with respect to that bill upon conversations and acts in which the Suburban Company or the Suburban bill and the official action of Mr. Meysenburg were never alluded to by either of the parties to it. I care not which alternative you take, whether you take all the testimony of Stock as to what occurred there that morning, or whether you take but part of it, you are brought to the conclusion that there was no express agreement or understanding, that there was no specific covenant, that there was no definite promise that anything should be done by Meysenburg.

We might assume enough from Stock's testimony that he had in mind it would be advisable from his point of view to remove whatever cause of ill-feeling, ill-will or unfriendliness might exist on the part of any member of the Council; so he might have sent anybody around, or gone around himself and said, "you have got this stock in the St. Louis Electric Construction Co.; what do you ask for it? I want to buy it." And he buys it. Suppose his ulterior purpose was to remove an unfriendly feeling that existed; can you predicate upon that, with nothing more, an express agreement to take a bribe? We do not indict men upon aesthetic principles, or for bad taste, or because they are lacking in discretion or delicacy in their dealings; we are not to indict Meysenburg and convict him because he does not conform to the standard which Mr. Hodges has set for himself; which was that if he had had the claim of Meysenburg he would put it in the hands of a lawyer who would sue for it. There was nothing to prevent Stock and the other gentlemen who would have been defendants in that suit and who were also interested in the passage of the Suburban bill from going into court and paying the money there. The District Attorney's position gives this kind of dealing an official position,

that having a claim against another which one believes to be a valid claim, and which has long been delayed, one cannot accept payment but can sue for payment. I submit if he had a right to sue he had a right to take it when it was tendered. The law does not encourage litigation; on the contrary it discourages it. What position would a man be in going into court and saying I bring this suit, I insist upon a suit, and yet the defendant in the suit is willing to pay me? The result would be that being pleaded in proper form he would be cast in costs, because not to accept payment voluntarily proffered would be a defense in the suit.

He had a *bona fide* claim there is no question under the testimony. He had talked with his brother members of the Council with respect to it, and the very openness of his conduct, the fact that he dealt with it as a business matter when he took the check in payment of it and not cash; that he left traces of what he was doing; that he held no secrets from his associates on the committee with respect to his claim, all absolutely militate against the idea that he should have gone on then and made an express agreement with Stock by the terms of which he was to allow his official action to be influenced by the payment of this money.

Now I say that we may concede that Stock had an ulterior purpose; we may concede that was his intention; we are not responsible for that, we are not responsible for anything that governed the action of Stock, or Turner, or their associates; we are responsible for the intent that governed the action of this man and only that, and if he believed he had a valid claim against the members of the Kinloch Syndicate, he had a right to payment with interest, but he did not have the right to stipulate he would vote for their bill if they would pay his claim. He had the right, notwithstanding his official position, he had the right to accept payment with interest if it was not coupled with any stipulation on his part that he should allow his official action to be influenced by the receipt of the money. Now they are undertaking to sustain this indictment upon the fact simply that he was an official; that he had this claim; that the bill was pending when he received payment of that claim, and they undertake to show what his official action was, because they could not make proof of their case without showing that; after the transaction he voted against the bill; that his conduct was consistent throughout. He had recommended on the 25th of January "that the bill should be reported back without recommendation." He had expressed himself that in his judgment a bill of that kind should not pass without the consent of owners of adjacent property, and that was the report he joined in making. Now there was nothing not in compliance with the conditions of that course. Nothing was presented at that time, no petition of the property owners, no pretense that the objections he had made before this interview with Philip Stock had ever been removed, and you have simply the fact that: He being in office, having this claim, and Philip Stock who was one of the people liable for the claim, comes and says, "I have come to take up that stock and pay for it."

You have not indicted this man for oppression in office, he has not been indicted for holding up the Suburban Company, he has not been indicted for blackmail, he is not indicted for bad taste; he has been indicted upon a specific charge of bribery stated in such terms as that described in the indictment. There can be no question that a man guilty as there stated has been guilty of bribery. But now the proof instead of being direct is round-about. Instead of having anyone testify "I will pay you nine thousand dollars for your stock, but I do not regard it as worth anything; I will pay you the nine thousand dollars for that worthless gilded paper, which you think I made worthless, but worthless it is; I will pay you the nine thousand dollars, but you have to stop your opposition to this bill; upon that condition I will pay you the money, and upon no other." Is that the proof? Is there anything approximating that? Tell us the witness that spoke anything of that kind? Stock absolutely disclaimed having done anything of that sort; Stock absolutely disclaimed having done more than simply to go down and get the shares and pay for them. Even after you drag in Kratz, at second-hand, what is it? Simply that Meysenburg is unfriendly, has got a grievance against some of your people; a claim your people ought to pay, why don't you go down and pay it and remove his unfriendliness, his ill-will? What do they do in pursuance to that? Do they say, "We will go down there and tell Meysenburg we do not regard his stock as worth anything; but if he will quit fighting the bill, and if he will support the bill we will pay him nine thousand dollars, pay what he asks us for his stock." Nothing of that kind was then suggested by Kratz, as Kratz is reported by Stock, but: "You are unfortunate; you have a man in the Council on the Railroad Committee opposed to you, why opposed I don't know, but I do know he has a grievance; remove his grievance, remove it; can't you go down and pay him." "Is he a corrupt man? Will he sell his good name for dollars counted out?" "No." "But I know he feels that he is not properly dealt with, that you actually owe him that money; now go down and pay him, take your chances on that, and the consequences." That is the effect of the testimony of Stock as to what Kratz said to him. So he goes down, takes the amount of money and with the words "I have come to get these shares of stock," which represented that grievance, which was an impediment, and injustice that Meysenburg felt had been done to himself; "I have come to get these shares, here is your money," and there is the end of the transaction.

On that you cannot predicate the charge of an express agreement, and that is the charge made in this indictment, the charge to which the State is to be held. It is not fair or just under our system of procedure, or under any other procedure, to state a case as baldly as that is stated; to state a case of a corrupt agreement expressly and specifically made, and then come in after having clouded a man, especially at a time like this when clouds hover over a great many and when there is danger. There is danger in a time like this

where there is any criticism to be made on his moral basis. There is an atmosphere coupled with the transaction and this may deepen so that a violation of the canons of taste may be held a violation of the ordinances of public law. So there is justice that the indictment brought against the defendant shall be adhered to as the law requires and shall come up to the standard which the authorities have set; that the proof shall come up and sustain what is charged—an express agreement and understanding, that his official action should be influenced by the receipt of these nine thousand dollars and that it was received under the pretext of a bribe. And yet, with that sort of an indictment we are let to the most remote inferences. We are left absolutely without the shadow of direct testimony and we are asked here to ignore all that and illustrations have been put to your Honor. The case of Lord Bacon has been cited. The case of Bacon is as wide from this as anything can be. Lord Bacon accepted presents from suitors before him who had no motive that he knew to give him anything except that their cause was pending in his tribunal. His defense was that, although he accepted presents from the suitors, he always rendered a just judgment; that he decided a case according to its merits. It was never charged as a crime against Lord Bacon that he accepted payments of debts against people who might have cases pending before him. And I venture to say that even in such a case as that if the indictment had charged the acceptance of presents under an express agreement and that he would corrupt his judgment and would render it in favor of the parties giving the present. If a man sent him presents without stipulation, without agreement on his part, the prosecution must fail because of variance between the proof and the charge.

We have first a defendant charged here with collecting a debt, which he believed he had a right to collect; some people owed him the fact that he had another interest; was acting in another capacity and they had something pending before the body of which he was a member does not deny to him the legal right to collect his debt; and if he had brought suit, and they had come in and paid, who could have said that he had done aught that was forbid by the law? Where is the law that denies him the right to prosecute a claim of that kind? The common sense and good taste invoked by my friend Captain Hodges would condemn his proceedings as much as it did that of Mr. Meysenburg. I might stand up and say it was bad taste to bring suit against the Kinloch Syndicate at a time when some of its members were interested in the Suburban bill, because you knew they would not fight it; knew they would come in and pay because they would not want to stir up further ill-will or greater activity. I could make that criticism and make it as effectively as the criticism upon Mr. Meysenburg for taking the money when tendered, without bringing suit.

But after all it is not a question of good or bad taste or of discretion. It is a question of criminality, a question of corruption. He is guilty if conscious he had no claim against these people, or

conscious he had none they would recognize, if he took advantage of that position and bargained with them upon the payment of this claim that he made, that he would cease antagonizing them or thereafter support their bill. If he did that, he violated the law; if he did not do it he did not violate the law. It is charged against him that the shares were worthless, unmarketable and worthless. Unmarketable they may have been and not worthless, or they may have been both; this indictment states that he knew them to be unmarketable and worthless. It imputes knowledge of the fact as alleged to him, because it makes the money paid for a pretended consideration to cover a transaction essentially corrupt. To sustain that indictment there must be evidence not only that these shares were unmarketable and worthless, but evidence that Meysenburg knew and must have known that they were unmarketable and worthless; that they were used as a cover or pretext for the transaction in which they were engaged with that deliberate intention.

Analyzing this indictment, you will find when you strike out the averment with respect to express agreement and understanding, you have absolutely no charge of any agreement left. You have simply the charge that he was a member of the Council, and he made an agreement of some kind, which is not stated, with Philip Stock, and that he received this money.

So, holding as the law holds, to proof of the charge as made in the indictment, the proof offered fails in this case completely, and the defendant should be discharged.

Mr. Krum. If the Court please, the seriousness of this charge, the consequences of a conviction are of such a nature that counsel for the defendant feel constrained to leave nothing undone by way of a proper insistence before the Court than the averments of this indictment have not been sustained; that the indictment itself does not state an offense under the statute, and that upon the case as made by the State the defendant should be given the benefit of the instruction which is now asked at the hands of the Court.

In civil cases where the charge of fraud is made as the foundation of the cause of action sought to be enforced by the plaintiff it is a familiar rule that if the testimony is as consistent with proper conduct and good faith and honesty, as it is with bad faith and dishonesty, the theory that the transaction was in good faith will prevail over that of a contrary nature. The rule is necessarily more strong, more pertinent, more persuasive and exercises a higher degree of control in a criminal case than in a civil case; and I respectfully submit that this case at the very threshold of the presentation exhibits this fully, that the situation of the defendant before the Court is just as consistent, is even more consistent with the theory of honesty and proper conduct than it is with the opposite theory of dishonesty and improper conduct. This indictment has been based upon a provision of the Statute which has no applicability to the legislature either of the State of Missouri or the Municipal Assembly of the city of St. Louis. Every averment to be found in the indictment of a substantiative character is limited to the section

which is applicable solely and alone to an opinion, a decision or a judgment; and I venture to assert you cannot look to a legislator for an opinion, for which you are to hold him responsible. You can look to one who is acting in a judicial capacity, or placed in the discharge of judicial functions; you can look to him in that regard because that falls within the scope of his office and within the performance of his official duty. You can not look to a legislator for the rendition of a judgment, because that does not fall within the scope of his duty and no obligation rests upon him as between the people and himself to render any judgment in the sense of that statute concerning the acceptance of a bribe, because it is not his duty to render any decision or arrive at any conclusion in the shape of a decision. What his duty is is to vote upon a measure brought and introduced to the Assembly of which he is a member. That is his duty when he comes to take action; and if you undertake to bribe him with reference to his vote, you do not undertake to bribe him with reference to some opinion he might indicate or express, or to some judgment that he might render; or to some decision at which he might arrive, because that is not within his functions as a legislator, it is not for him to judge; it is not for him to determine; it is not for him to construe; it is not for him to adjudicate; it is for him to legislate. It is for him to make laws. It is for him to create measures, not for him to express an opinion upon them after they are made; it is not for him to render any judgment in regard to them; it is not for him to express any decision either for or against, either before or after their enactment. And I urge that this indictment does not fit the statute because it does not meet the Constitution and the legislation which has made it criminal, but it does by its terms fit one who in the discharge of functions of a judicial nature is called upon to express an opinion, or to arrive at a decision, or to formulate a judgment, neither of which has any applicability to one in the situation of a legislator.

My brother Lehmann demonstrated, if there were need of any such demonstration, that here is a matter of essential description of the offense. Now where is the pleading applicable to an agreement? In criminal cases the State is bound to prove as the State has laid it by way of averment; and the averment here is that the sum of \$9,000 was paid by Stock to the defendant, Meysenburg. Now what is the evidence in regard to that? The testimony is limited to the statement of Stock and the two checks. What is the proof? Mr. Stock says this was all that occurred between himself and Meysenburg; that he had but one interview with Meysenburg and that this was all that occurred at that interview.

If this indictment avers that the sum of nine thousand dollars was paid by Philip Stock the State must be held to proof because the State has laid the averment. Now they have no proof that Stock paid defendant nine thousand dollars. They have proof and they have proved by the only witness they have produced on the subject, and by these two checks, that the amount which Meysenburg received was not nine thousand dollars, but was nine thousand

dollars less \$33.72, and that is all he did receive, and that is all he was paid by Mr. Stock, and accordingly this averment in the indictment is untrue, and it has been proven to be untrue by the State itself.

Now the averment here is that there was an express understanding and agreement. There is no evidence of any agreement of any description, express or implied.

How can you imply an agreement of this kind from the testimony, that unless and until—omit the word “unless” if you please, or rather omit the word “until,” if you please, because you can not give sense to the indictment unless you do omit it; where do you find proof here that an agreement of this description was made, unless the said sum of nine thousand dollars was so paid by the said Philip Stock to the said Emil A. Meysenburg, said Emil A. Meysenburg, as a member of said City Council, would and should oppose, resist, thwart and defeat the bill?

Here the averment is that the consideration upon which the contract was based, had already been paid, and paid before the contract was made, and then that the contract was made dependent upon a consideration to be paid after that consideration had already been paid.

What does the indictment say Meysenburg agreed to do unless something was paid him? That he would vote against the bill? No. That he would render a judgment against the bill, conceding that he was in a position to render judgment? No. That he would render a decision adverse to the bill? No. What then? Indicate to me some provision of that statute applicable to the situation in which the legislator is who is to oppose certain legislation unless he is paid so much money; who says he will oppose legislation unless he is paid so much money and is paid to prevent his opposition? The statute does not cover any such situation as that. How is he going to oppose it? The indictment does not say how he is to oppose it; the statute does not cover the case. How is he to resist? He is to resist the passage of the bill. What is there in the statute that says that a legislator who resists a measure, which happens to be pending before the body of which he is a member, because he is paid to resist it that he is guilty of the offense of accepting a bribe. That he will “withstand.” What does that mean, that he will withstand? “I will withstand the bill.” That may be intelligible to some people; I confess I am utterly unable to comprehend as a legal proposition the significance of this averment. Nothing in the statute covers any such situation as this. That he will “thwart” the passage of the enactment; that he will “defeat” the passage and enactment of the bill. How defeat it? Is there any averment here, if the Court please, that this agreement covers or sought to cover or did cover the vote of the accused; that the accused agreed to vote in a certain way provided he was given so much money? Or that he made an agreement to vote in a certain way, based upon a corrupt consideration? Not at all. And, if the Court please, in the absence of an averment of that descrip-

tion the conclusion must be reached by the Court that the defendant did not make an agreement, did not enter into an undertaking to vote either for or against the bill or to cash his vote in any direction in regard to the bill; because in the absence of the averment the fact must be taken as having no existence, and the fact must be taken against the State.

I say this case is more constant with the theory of honesty on the part of Meysenburg than it is with the theory of dishonesty. May I be permitted to ask your Honor if your Honor, in all your experience of cases of this description as you have found them in legal literature throughout the United States, has ever come across a case where the defendant with painstaking particularity has provided every possible means for his own detection, for his own conviction, for his own punishment? The processes on the way to crime are secret. One undertaking to commit a crime does not go out in broad daylight and proclaim the details of his offense to the world at large, does not set out with painstaking particularity to provide the State with all necessary material to prove his crime and secure his conviction. Who ever before heard of a defendant, who proposed as a member of a legislative body to enter into a contract of this description and did enter into it, who first took a check payable to the order of the giver of the bribe, and then took that check to the bank to which he showed it, and exchanged it for another check, which he proceeded to deposit to his own credit at his own bank? My brother on the other side says that is evidence of concealment on the part of the defendant. That is the same kind of concealment that the ostrich practices when he sticks his head into the sand upon the theory that if he gets his head covered the balance of his body can not be observed by the looker-on. If Mr. Meysenburg were intending to enter into a contract of this description, can anybody presume that he would have taken a check payable to his order, indorsed that check, exchanged that check for another one, and then, furnishing the alleged giver of the bribe with the details of the entire transaction in the shape of a statement signed by himself, made out by his own clerk, at his instance? Can one conceive a guilty person operating in that way? Take all these cases which have been brought to the attention of the public and what is found? Why, that the consideration of the corrupt arrangement is money. You do not find a check, you do not find agreements, you do not find statements of account, if you please, but money and nothing else. If the arrangement had been carried out and the acceptor of the bribe had received the consideration do you suppose he would go around with the money and say "here I now deposit this money at my bank; I got it from (whoever was the giver of the bribe); I am taking the precaution to provide everybody with the means of having me accused of accepting this bribe; here is all the evidence you want that I received or got the money from the giver of the bribe and deposit it to my own credit." Meysenburg did take a check payable to the order of Stock and himself; he gave Stock back the

difference between the amount due him for his claim, he took the check to the bank and exchanged it for a check covering the amount that was actually due and he received from the bank the difference in currency when he deposited the check to his own credit. Then on top of all he gave to the giver of the bribe as alleged a complete detailed statement signed by himself. Lunsay, if the Court please, might act in that way, but I apprehend a man in his senses never was found so persistently and industriously furnishing the State with the most complete case against him, upon the theory of his guilt.

Now I come back to this extraordinary indictment and beg to ask the question: Where is the evidence that there was an express agreement made, or that there was any agreement made between Stock and Meysenburg that unless the sum of \$9,000 was paid to Meysenburg he would defeat the so-called Suburban bill? Why, if this were a civil case, would your Honor hesitate a moment about taking the case away from the jury because the plaintiff had not succeeded in establishing his petition or furnishing even *prima facie* evidence of the truth of the charge of the cause of action laid in the petition? Not at all. There is no evidence here of an agreement. Stock does not say there was any agreement. Stock says to the contrary, that there was no agreement; and the Court is bound to find, that there was no agreement.

There is not a word here with reference to any action on the part of Meysenburg in the Municipal Assembly. Not a word. He did not agree to oppose, he didn't agree to thwart, he didn't agree to withstand, he didn't agree to do anything. He did not agree to resist or to defeat. He made no agreement except the one testified to by Stock, and that was if Stock gave him the amount, principal and interest as representing the sum that was due him, that he would surrender the shares of stock to Philip Stock. The agreement was made, the money was paid, and the stock was delivered.

The witness testified there was but one interview between himself and Meysenburg with reference to these shares in the St. Louis Electric Construction Co. before this day in February, 1901, and that he never met him afterwards in regard to that transaction. At the time of the sole meeting, at the time of the one interview, which was the only time at which these parties had any conference with each other, the agreement was simply that Stock should pay Meysenburg whatever represented the amount Meysenburg was out so far as advances concerning these shares, and the agreement was carried out by Stock paying the money and by Meysenburg delivering the shares.

Can it be contended that that sort of evidence fits this indictment and makes a case which is to go to the jury in defiance of the presumption of innocence which prevails in behalf of the defendant; in defiance of all recognized rules of criminal procedure; in defiance of all recognized rules under the Constitution or proper and appropriate methods of pleading, and the methods of presentment for the purpose of advising the defendant of the charge which he is called upon to meet?

March 26.

Mr. Bishop. If I understand the position of counsel for defendant in this case at this juncture, the objection is two-fold. First: That the evidence is not sufficient to take this case to the jury under the indictment, and second: The indictment itself is deficient, and that the evidence is not sufficient to make a *prima facie* case and should not be submitted to the jury for their consideration.

In the first place, we find the defendant in 1899 was elected a member of the City Council which was one of the bodies composing the Municipal Assembly of the City of St. Louis with certain legislative powers; that he qualified after that election and became a member of the Municipal Assembly and City Council, and that upon organization of the Council he became a member of the Committee of Railroads, whose duty it seems to be to consider and pass upon certain propositions which are presented before the Council looking towards the granting of franchises, building railroads and railroad tracks in the city.

Now having become a member of the City Council and holding a certain office as a legislator of the city, and having by the law certain duties imposed upon him, we find that about a year after, in January, 1900, there were issued to him by the Electrical Construction Company two certificates of stock which purport to be two certificates for one hundred shares each of the capital stock of the St. Louis Electrical Construction Co. of the par value of \$100 each, representing, we will say, \$20,000.

Now how he became possessed of these papers there is no evidence. We do not know how he acquired these certificates of stock, but he did not acquire them until he became a member of the Council for nearly a year. He may have paid value for them; they may have been presented to him; he may have held them as collateral security, or he may have acquired them in any other way. He had obtained custody of these pieces of paper. There is not a syllable of testimony that anybody owed him any money or had any claim against anybody; he simply held certificates of stock which purported to be a liability on the part of this company.

Next in order, we find in October of the same year, 1900, while he was still in possession of these papers, there was introduced in the City Council an ordinance by which the city of St. Louis was to grant certain franchises to the St. Louis & Suburban Railway Co.; this is known as Council bill No. 44, and under the usual order of proceedings the bill was presented, was read the first time, read the second time, and then referred to the Committee on Railroads, of which this defendant was a member, in October, 1900. We hear nothing more about this bill; we know nothing about it, so to speak, until January, 1901. It had been slumbering in the committee until in January, when we find at the meetings of this committee which were held down town as a matter of convenience for the gentlemen who composed this committee, who had offices near each other, two in the same building, Mr. Meysenburg telling the other members of this committee that he had a claim of some sort against

Mr. Turner and others who were interested in that bill—just exactly the nature of the claim was not of sufficient importance to these gentlemen to inquire but seemed to represent matters of the defendant, some matters, which had transpired years before, and the purpose and object of his speaking in regard to this matter was in connection with their consideration of this matter pending before them in their solemn and official capacity as members of this committee and with reference to matters that came before them as members of the Municipal Assembly, and remarking that this was a proper time to enforce his claim not against the Suburban, which was the corporation named in the bill, and which was interested in the passage of the bill, but against certain individuals who were interested in the passage of this bill, and he is advised and it was suggested by the gentlemen who were friends of his and as citizens that it was entirely indiscreet to take advantage of that occasion, and the fact that he is a representative of the Municipal Assembly to endeavor to enforce this claim in any such way was manifestly improper; and he was advised to put it in the hands of an attorney to enforce the claim in the usual and proper way.

It so happens, as appears by the evidence, just at that time, Mr. Stock, the legislative agent of the Suburban to look after the passage of that bill through the Municipal Assembly, and having it become an ordinance of the city of St. Louis, becoming impatient with the delay which occurred, speaks to Mr. Kratz, who, it seems, had some connections with this bill as a member of the Municipal Assembly to ascertain why this bill remained so long in committee, and Mr. Kratz undertook to find out and inform Mr. Stock the cause of the delay. He reports first that Mr. Meysenburg is obstructing the report of the committee, just exactly how it does not appear. The next inquiry is: What is the cause of Mr. Meysenburg's opposition to this bill? Why is he obstructing the report and its consideration in the City Council? The reply is "some of your people or the people that are interested in the passage of this bill have not treated him right in regard to some shares of stock." "Well what is the trouble?" "Well Mr. Meysenburg is out on that stock and he wants to be recouped, wants to get what he paid for that stock." "Now what does he want for that stock?" It was suggested that some of that stock had been previously sold for \$10 a share, and Mr. Stock expressed a willingness to purchase that stock and obtain the good will of Mr. Meysenburg. The answer came back that \$9,000 was required by Mr. Meysenburg for his stock. Nothing was said about any claim against the Electrical Construction Company or against the Central Electric Light & Power Co., or other electrical company, but against some individual not treating him right; there was no complaint against the Suburban. No claim against any other company, but against certain individuals interested in this bill now pending before the Council, members and officers of the Suburban Railway Co., and he demands \$9,000 as a consideration for his good will and as a member of that Railroad Committee and as a member of the City

Council, and finally we find arrangements are made by these people representing the Suburban, who are willing to accede to the demands of Mr. Meysenburg and make their arrangements for the taking up of this stock. Now the object and purpose of the defendant in the matter is manifested by his messages to Mr. Kratz, to Mr. Stock, rather, that his opposition to that bill, that his action as a member of that Railroad Committee in its secret sessions are antagonistic to that bill because of this feeling he has and ill will towards parties who are interested in the passage of the bill and his good will can only be obtained, and he will not cease his opposition to it, will not become friendly towards the bill, unless and until the money is paid, the amount demanded, \$9,000.

The significant circumstance about this transaction is while these negotiations were going on through Mr. Kratz between the defendant and Mr. Stock, Mr. Kratz is seen for the first time in the office of Mr. Meysenburg. Then we find that on the 30th of January, at the close of this arrangement, which had been perfected between the defendant and Stock through Kratz, a note is deposited in the German Savings Institution for the sum of \$9,000, for which was issued a cashier's check for \$9,000, signed by the cashier of that institution and made payable to the joint order of Philip Stock and Emil A. Meysenburg, and just at that time when this negotiation had come to a conclusion and when Mr. Meysenburg is given to understand not ambiguously, or indirectly, but directly, that the parties interested in the passage of the bill are ready to come to his terms to take up the stock and pay his \$9,000, we find him ready to agree to report this bill to the Council, "Without recommendation" and we find immediately afterwards, as soon as this transaction is completed, which had been agreed upon between the defendant and Stock through Kratz, that an arrangement is made for a meeting at the office of the defendant, where Mr. Kratz is present, who accompanies Mr. Stock first to see that the check is obtained, and the first thing is said showing that this arrangement had been made, that an express agreement had been arrived at between these parties, between the go-between of these parties, the first thing Mr. Kratz said is "Mr. Meysenburg here is Mr. Stock to settle for those shares." We find the defendant ready to finish up this transaction, he has the certificates of stock all there, with his signature endorsed upon the back of them and the only thing that passes between him and Mr. Stock is "You understand that you consider we are not good friends; to show you we are, we are ready to take up these shares." The transaction then is completed, the check is turned over to Mr. Meysenburg and becomes his property; the shares are turned over to Mr. Stock, properly endorsed, and they become his property. It is true that at the time Mr. Meysenburg turned over another paper which purports to be a bill against the St. Louis Electric Light & Power Co., a matter which had never been mentioned in all these conversations and transactions, which Mr. Stock never did mention, which Mr. Meysenburg never mentioned and will cut no figure in this case whatever, but was merely tacked

on to these certificates of stock, not examined by Mr. Stock, not considered a matter of importance to him, no matter or item contained thereon was spoken about, but it was handed to him and they passed out, he and Kratz. It is true Mr. Meysenburg made a remark as he went out, "Now this is purely a business transaction."

The evidence in this case unquestionably is that through Kratz the defendant and Mr. Stock had arrived at an agreement and understanding, a positive and express agreement, without equivocation and ambiguity that upon the transfer of these certificates of stock Mr. Stock was to pay him \$9,000, and the purpose and object of this transaction was to obtain the good will of Mr. Meysenburg, not as an individual nor as a man, but as a member of the Railroad Committee of the City Council, and as a member of the City Council, and to prevent any further opposition on his part against the report of that bill to the City Council.

Now Mr. Krum in his argument yesterday said this matter was not closed at that time and made the suggestion, that if this agreement had been made by Mr. Meysenburg to Mr. Stock, still he could have stopped payment of that check. I do not profess to be a civil lawyer and would not undertake to advise persons upon that proposition but I have very grave doubts about that. As soon as Mr. Stock went to the German Savings Institution and got that check, it imported a liability to Mr. Meysenburg, which Mr. Stock could not interfere with or stop to save his life.

Now I say upon this condition of affairs presented by the testimony, the indictment is sustained when it avers that this money was paid or this check was given to Mr. Meysenburg upon the express understanding and agreement that in consideration of the payment of this check for these shares of stock which were valueless and unmarketable, he was to cease his opposition theretofore manifested against the report of this committee and in the Council, and his opposition to the bill on general principles.

We have further the testimony of Mr. Nolker that the stock at that time had no value whatever; that the corporation which issued it owed debts and had no assets and the stock had no market value for any purpose; and in addition to that Mr. Stock had communicated through Kratz to the defendant at the time the proposition was made that the stock was valueless and when he closed this transaction in handing him the check said this stock was worth nothing "but it was to get your good will and have you our friend, we will pay you this money and take up that stock."

Now my understanding of an express agreement is that it is one which leaves nothing to be implied. There is nothing left to be implied in the case whatever. The minds of the parties came together, and it was not necessary that the former transactions be gone over, but from the fact that this transaction occupied but a very few moments, each party to that understanding and agreement came there and was prepared to carry it out as had been arranged before, that all the terms were distinctly understood by both parties; nothing was left to be explained, nothing was left to be

amended, everything to be done was done, and the express agreement had been reached.

The facts in this case show that these parties had met, nothing was left to be inferred, nothing remained to be done, but to complete the transaction by the mutual delivery of the papers held by each one of them, and that the significance of the purpose as understood by both of these parties unmistakably was the taking of this stock and the payment of this money or what was equivalent to money, that this matter in which the Suburban Railroad was interested would meet with no further resistance on the part of this defendant. He received that money with the distinct understanding when he parted with his shares and whether he afterwards kept the agreement is wholly immaterial. The transaction was completed at the time the papers were exchanged and Mr. Stock left the office, and any subsequent conduct of Mr. Meysenburg did not change the condition of affairs at all.

Mr. Folk. I will first address myself to the meaning of the words "express agreement" or "express contract." From the argument of counsel one would get the impression that to make an express contract or agreement it would be necessary for it to be in writing. Now the meaning of the words "express agreement" or "express contract" I take to be this: not necessarily in writing, but expressed either in writing or by words or conduct. That is an express contract as distinguished from what the law calls an implied contract. An implied contract is one that the law imputes to a party, for instance, if a grocer sends his goods without any order and I accept the goods, there the law imputes to me a contract; if a man does work for me without any order and I accept the work, the law imputes to me a contract to pay him for his services; there is an implied contract. Now as distinguished from an implied contract that the law imputes where nothing has been said, we have what is known in the law as an express contract; that is, where the party bound or sought to be bound has by his act expressed it, by his word expressed it, or by his writing expressed it. It may be expressed in any of the numerous ways that any act can be expressed. Now in Webster's Dictionary we find the word express to be: Directly and distinctly stated; declared in terms; not implied or left to inference; made unambiguous by intention and care; clear; not dubious; as, express contract, an express statement.

The Century Dictionary defines the word: "Clearly made known; distinctly expressed or indicated; unambiguous; explicit; direct; plain. In law commonly used in contradistinction to implied; as express warranty; express notice; an express contract."

This indictment alleges an express understanding or agreement, as I pointed out, as distinguished from an implied agreement which the law imputes to a man without any conduct or without any act or without any word on his part. In this class of cases any agreement necessarily must be an express agreement because it is not the class of cases where the law would impute a promise by reason of any other act, it necessarily must be an express agreement if any

agreement at all. Now under the law this express agreement can be proved either by writing, can be proved either by words spoken by the defendant or by the acts and conduct of the defendant and circumstances; that is, an express agreement can be established by writing, or by words or by conduct.

Now here in this case we have this defendant a member of the City Council, with a bill before it, we find him stating to the fellow members of his committee that he has some sort of a claim against some of the parties interested in this Suburban bill. We find him saying he was going to make those parties pay that money while the bill was there. He thinks it a good time to make them pay. We find the legislative agent of the Suburban, after the bill is long delayed, going to Mr. Kratz, a member of the Council, and asking "Why is this delay?" We have the answer, "Because Mr. Meysenburg is sore." We find Mr. Stock and Mr. Kratz, the go-between, arranging to remove that difficulty, this soreness which is the cause of his opposition. We find Kratz coming back to Meysenburg after he had seen Stock, who stated to him he would find out what Meysenburg wanted, saying Meysenburg wanted \$9,000. We find Mr. Stock saying "These certificates are not worth anything, but if it will make him our friend in this matter we will do it." We find Mr. Stock going with Mr. Kratz to Mr. Meysenburg's office. We find Mr. Meysenburg all ready and waiting for them, showing that Mr. Kratz had arranged with him upon the payment of this money his soreness would be removed and his opposition to the bill removed. Mr. Kratz tells Mr. Meysenburg, "Here is Mr. Stock, ready to take those certificates." Mr. Stock says to Mr. Meysenburg, "Why are you sore at us? Why are you fighting us?" and he says, "You people have not treated me right." Mr. Stock says, "These certificates are not worth anything, but to keep your friendship, we will pay you \$9,000." The money is paid and we find that as Mr. Stock goes to leave he says, "It is not to influence his vote," not his conduct or his opposition to the bill, but his vote. But he says that, after he has the check in his hand. These are circumstances taken in connection with the fact that Meysenburg knew, as evidenced by his statements to the fellow members of the railroad committee that this suppressed claim, or the payment of it, was to come from the very people interested in the passage of the Suburban bill; that he knew, as evidenced by his connection with Mr. Kratz, that Philip Stock was representing the Suburban Company interested in the passage of that bill; that he knew that Philip Stock was paying him that money to remove his opposition to the bill, and knew that Mr. Stock represented the Suburban, and knowing that the money was paid to him by Stock to remove his opposition, he accepts the money. Is not that an express agreement? If a judge on the bench, when a party is charged with crime before him, has some intimation that that party will pay him money and this party charged goes to the judge and hands him money, and if the judge knows that money is paid to influence his official conduct, he need not say a word, but if he accepts it he makes an express agreement to influence his official conduct.

Now Mr. Krum talks about a vote, speaks as if a member of a Municipal Assembly or legislature could not be influenced or could not be bribed except so far as his vote may be concerned, as if the legislator has no judgment, as if he votes without judgment, as if he votes without decision, as if the vote were all that the legislator is there for. A legislator's constituents are just as much entitled to his influence with his fellow members as his vote. He can be bribed just as much to use his influence with his fellow members as he can to vote for the bill himself. In fact, you may find it will happen that a member of an Assembly may accept a bribe to work for a certain measure and yet for appearances sake, to avert suspicion, to keep the record clear, the very agreement by which he was bribed, purposes that he himself is to vote against the bill.

If a legislator's influence can be sold, if he can, without impunity, traffic in his influence with fellow members or make bargains not to pass certain measures except by his vote, then legislation can be bought and sold with impunity because the vote itself is the smallest part of the whole duty of the legislator.

In a Colorado case the policeman whose duty it was to suppress gambling accepted from the gamblers money, the Court says, "There is necessarily from that an agreement that he should neglect to perform his official duty; for what motive could the gamblers have for giving him this large sum of money other than to affect his official conduct?" What motive could Philip Stock, the agent of the Suburban Railway, and whom this defendant knew to be the agent of the Suburban, have to pay him this money except to affect his official conduct; he knew that Philip Stock could have had no other motive than to affect it, and taking it under those circumstances, with that knowledge, he made an agreement that it would affect his official conduct,—as plain and clear as language itself could make it.

It is not expected that the parties will set down and write out an agreement and use the words "I hereby agree to be bribed" or "agree to give a bribe." They conceal their criminal acts; they conceal their criminal thoughts as much as possible. As corruption is insidious so they go about it to conceal the main purpose. We have to get the express agreement by what the parties do, by their conduct, by what passes between them, by what was said and by what was done.

Mr. Lehmann mentions a case of Lord Bacon, when Lord Bacon accepted money, so-called a gift from a litigant before him, when he knew that litigant could have no other motive for paying him than to affect his conduct as a judge. There he was bribed and there was an express agreement to affect his official conduct and it matters not that he afterwards decided against the man that gave him the bribe. For as stated there, and in other cases, it often happens that the bribe comes to light because an official takes bribes from both sides. For when a judge takes a bribe from a man and decides in his favor, it is neither to the interest of the judge nor the bribe giver to make it known, because the bribe

giver has gotten what he paid for. It is only when corruption becomes too flagrant and an official takes a bribe from both sides and necessarily has to decide against one of the men that paid him the bribe, that the motive is revealed and becomes apparent. It makes no difference what he did if he takes the bribe, the crime is completed at the time he takes it and his subsequent conduct cannot enter into, wipe out or mitigate the offense.¹

In this class of cases it is not expected that the agreement, the corrupt contract, shall be reduced to writing; that it shall be explicit as to details; that they would do anything to bring their nefarious agreement to light, it is expected that they will do everything possible to keep their infamous contract from being made public, and if made public to keep its terms from being known, but, nevertheless there is an express agreement, although its terms may be hard to make out, although its details may be difficult to prove, there is an express agreement of corruption and it is not necessary in establishing an express agreement to show every detail, to show that it is in writing, or to show any of the *minutiae* which enter into contracts generally. It is sufficient if it appear that the defendant, as an official, accepted money that he knew was paid him to influence his official conduct, from that there is an express agreement that his official conduct will be influenced.

Stock went there to give him this money to influence his official conduct, the defendant in accepting the money knew that it was intended to influence his official conduct and accepted it under such circumstances. Stock gave it as a bribe, and he took it as a bribe, when Stock went there representing the Suburban, the fact which this defendant well knew, when he handed him that money to influence his conduct on that bill which this defendant knew, when we consider what passed between Kratz and this defendant and this defendant and his fellow members of the committee; when he accepted the money under such circumstances knowing that the purpose of it was to get him not to oppose the bill, there we have made out a case under this indictment of an express agreement, receiving money under an express agreement not to oppose the passage of the bill. When we find further that this defendant took that check not to the bank where he deposits, but to the German Savings Institution and exchanged it for another check in his own name which he deposits in his own bank, we see there the evidence of his corrupt intent to conceal the transaction. They say that if it was his purpose to conceal the matter he would not have taken the check at all. But why did he go there and get another check for a different amount and deposit that check in his account? Why not go and deposit his check in the original instance? Because the transaction was crooked, and he knew it to be crooked, and to conceal the very crookedness of it, he adopted that method to keep it under cover.

¹Mr. Folk here cited the cases of *Glover v. State*, 109 Ind. 391; *State v. Miles*, 89 Me. 142; *Newman v. People*, 23 Colo. 300; *Com. v. Donovan*, 170 Mass. 228.

IX. AMERICAN STATE TRIALS.

Furthermore, the evidence shows that this corrupt agreement was, in fact, carried out, the evidence shows that there were thirty-two meetings; that this bill was held up, and for thirty-two meetings nothing was done. The evidence shows when this defendant got his money opposition ceased and the bill passed on the 8th of February; he got his money on the second of February.

I think we have clearly made out a case under this indictment, and the case should go to the jury for them to pass upon.

Mr. Lehmann. The argument presented by the Prosecuting Attorney would be much more applicable if it were against Philip Stock than it is as it is against the defendant. Under the first section of the statute with respect to bribery as to the giver of the bribe it is utterly immaterial what his attitude of mind with respect to it may be. The giving it is the intent although it may be not accepted in that way at all by the receiver, and the receiver may bring it before the courts of justice. But the giver has been guilty and it requires no intent on his part. But when we come to the second section and the official is to be charged the language of the statute is very different. An agreement is the essential element of the offense. An agreement is required by the statute, agreement is therefore required by the indictment; there must be an agreement and such agreement is not thus alleged, but a mere understanding. The argument made by my friend that if Stock gave a gratuity himself and there is no other agreement at all that still the law will imply an agreement will not serve here, because if that were true then the statute would not provide any further than that if he received a gift, gratuity or reward from anybody having any matter of proceeding pending before him. Now whatever the statute ought to do may be one thing, but the statute does not make an offense if the officer negatively receive a gratuity or the promise or undertaking to make one. And if the statute does not make that an offense it requires that he make that agreement which is then punishable under this section; that there must be coupled with the receipt of the gift or promise of a gift an agreement; but I submit it is not competent simply to prove the receipt of what is characterized as a gift and then to infer the other essential element of the offense, from that fact, which is not shown by itself to be made an offense by the statute.

Therefore it is essential to the description of this offense that there shall be stated, first, what gift, consideration, gratuity or reward were promised, or undertaking for the same was made, and what agreement was coupled therewith. That is absolutely essential under this statute.

Now, what is the agreement charged here? That this money was paid to him on the express understanding and agreement between said Stock and said Meysenburg that unless and until this sum of \$9,000 was so paid he would in his official capacity and character as aforesaid, oppose, resist, withstand, thwart and defeat the bill. That "until" is a very particular word in that connection because they state that he received this money upon the agreement that

until he received it he would oppose the bill. According to them the agreement was contemporaneous with the receipt of the money. Of course until could not apply until the contingency occurred upon making the agreement. So that in trying to give effect to the agreement we will take the word "unless" he was so paid he would oppose the bill. Now there must be then proof of an agreement of that kind stated in express terms, an agreement that unless he was paid this money, "unless I get this money from you I will and shall oppose this bill."

Now, where is the proof of that agreement?

There is nothing in the testimony of Stock as to his conversation with Kratz that this money was to be paid, or that Meysenburg demanded that the money be paid, and if he was not paid that he would oppose the bill. I challenge the discovery of the word "oppose" or anything in relation to it—I do not stand upon the particular word—I challenge the discovery in this whole record of any statement made by Stock directly or made by him indirectly as having been made to Kratz or Kratz to the other, showing any agreement whatever made by Meysenburg as to the advance or receipt of this money with respect to this bill.

You may read the testimony all over and you will not find one word that they had any agreement here except that they wanted his good will. If they had indicted Meysenburg upon a charge that he had received \$9,000 to propitiate, to get his good will, knowing that was the purpose of the payment to him, that indictment would be fatally defective under this statute.

My friend argues here upon the fact that this bill was held up a number of months and then let go. Meysenburg received the \$9,000, then everything moved at once and the bill speedily became a law. Now the check itself is here in evidence; it is dated on the 30th of January; it was arranged for on the 29th because Stock telephoned to Kratz on that day saying I want to see you and go with you to Meysenburg on the 2nd of February and there is no pretense that Meysenburg knew anything before the 2nd of February that he would get this, certainly not before the 29th or 30th, because it was only as late as the 29th that Stock informed Kratz. Now what is the fact proven by the record? That on the 25th day of January Wiggins reported the bill for these amendments and it was pending before the entire Council more than a week when this money was paid and Wiggins further testified the bill was under his direction all that time. He said he was not only Chairman of the Committee, but also he was the oldest of the members, more familiar with legislative matters, that he formulated these amendments, submitted them from time to time to his associates on the committee.

The charge in the indictment is fatally defective in view of the evidence, because the charge is definite that payment made was the sum of \$9,000 lawful money of the United States paid to him, the said Emil A. Meysenburg, by the said Philip Stock. Here is not a misdescription of the paper, not a misdescription of the check.

The statement is that the payment was made in money, lawful money of the United States. That is a complete misstatement.

There is a distinction recognized, a patent distinction between the giving of a check, which is a mere promise to pay money, and money itself. Here we have all the elements provided for "consideration, gratuity or reward or any promise or undertaking to make the same." No doubt a check is a promise or undertaking to pay money; there is no doubt but it is clearly within the statute and a man is indictable for taking a check for money upon the agreement which is specified here in this statute. It is not the equivalent for money, lawful money of the United States, to say there was a written undertaking to pay that money. The two are not identical. A check is not payment, a check is only a conditional payment. A check is no legal tender, a check is not money at all. It is simply a promise to pay money; and under the allegation of the payment of money neither in civil law or in criminal courts would they be supported by proof of payment by check. The allegation of a tender of money in a civil suit could not be supported by the proof of the tender of a check for the amount, because a check is not money it is simply an undertaking to pay money. Therefore the description of money is not responded to by proof of a check.

The defendant is entitled to know what he is charged with. Therefore there must be a description of the offense which he is called upon to answer, and it would not have been enough in this case, as the pleader has here himself recognized; because while in the indictment he uses some of the language of the statute; that the defendant did solicit, accept and receive a certain gift, consideration, gratuity and reward—he uses that but does not stand upon it, and manifestly that would not have advised the defendant what he was charged with. Nothing at all in that would advise him because it describes nothing and the pleader recognized that and went on and states that there was a reward, a gratuity given, that there was \$9,000, lawful money of the United States. He makes the plea definite and specific and he is held to that. Now the check may or may not have been good. The check may have been entirely worthless. A check does not stand for anything except the promise or undertaking, and there might be no value in it whatever. The payment of that could have been stopped and there would have been no way to enforce the collection of that check if it had been stopped. It may be bad taste for your Honor or any Judge upon the bench to receive presents from lawyers who practice at your bar or from litigants who have cases pending before you; that may be bad taste but it is not indictable under this or any other section of the penal code. There is no penal code that undertakes to be as broad as the code of ethics, by which men are supposed to be governed in their duty in all the relations of life. The law itself recognizes that many things are better left unpunished though they may be subject to criticism, so bad morals are not an offense for which men are subject to indictment and trial, whatever you might

say on the score of taste, whatever you might say on the score of discretion, whatever you might say on the score of propriety. I say the gift being made without any agreement, there is no offense on the part of the judge, although on the part of the giver there was an intent, a purpose in view that he thought by so doing he might incline the mind of the judge upon a matter before him, the judge would not be guilty of an offense because there was no corrupt purpose on his part; the receipt of the gift might mean nothing more than a question of taste or a matter of discretion or propriety, but not of criminality. On the other hand the receiving of a gratuity upon an agreement to do something which the man ought not to do in his official capacity is an offense.

Now there is the first objection made here; there is no proof whatever of any agreement; you can find nothing in this testimony as to what occurred in Meysenburg's office, you cannot find anything that was said by Kratz to Stock or Stock to Kratz. The matter of consultation between them was to get Meysenburg's good will. There is not a statement and I do not limit it to what was said in Meysenburg's office; not even Kratz in his report to Stock said: "If you will pay Meysenburg that money he will quit his opposition to the bill."

Express agreements are express in their terms; they need not be in writing, for they may be express and not in writing. Agreements are of various kinds. You have the agreement in writing and the agreement by parol; but the agreement in writing is, of course, express and so is the agreement in parol. The only difference is one is more easily susceptible of proof than the other, the writing speaking for itself while the human memory may be fallible. An express agreement is an agreement which the parties have stated; where they have left nothing to inference and nothing to implication, where their minds have met and concurred upon the same proposition.

Now the naked receipt of a gratuity does not constitute the offense. He must agree to do something. What does the proof show that he agreed to do with respect to that bill? I submit that the proof does not show that he agreed to do anything; it does not show that he was asked to do anything. The proof goes no further than that they came to him—putting the worst construction on the testimony—that they gave him this and they hoped he would feel better towards them. But there is no suggestion anywhere that he agreed for what they expected him to agree, or that they asked him to do anything with respect to this bill. Did he agree to bring it out of the committee? Did he say, "Now if you give me this, leaving out the question of valid consideration, I agree to do anything?" What did he say? Did he intimate, "I will let this bill come out of the committee." No; it was already out of the committee. Did he intimate, "I will vote for this bill." Did they ask him to intimate it? Did he intimate he might refrain from voting against it? No. Did they ask him to intimate anything of that kind? What is there that he agreed

to do with respect to that bill? My friend certainly ought to answer that question, and if there is no answer to that question found in the testimony I submit the indictment is not sufficient.

I must confess I am not metaphysician enough to distinguish between the mind and will. I understand an agreement to be a concurrence of the minds of two or more people upon some proposition. When you and I agree we agree on something. I agree with somebody; that is a necessary implication of an agreement. I agree to a proposition you make or have stated; you state a certain proposition, I agree to it; your agreement is implied in the fact that you have stated it; my mind goes out and meets with you; that is, I agree to your proposition. You ask me to do something, I agree to do it; I don't know whether it is a concurrence of mind or will; as I say, I am not metaphysician enough to distinguish. Our law books are not metaphysical, and they say a meeting, a concurrence of the mind, not a concurrence of the will.

The COURT. Your idea is a man has a right to refuse to do anything, to use his influence to prevent others from doing anything, in an official position.

Mr. Lehmann. As a matter of ethics? No, sir.

The COURT. As a matter of law if paid for doing what he ought to do?

Mr. Lehmann. Suppose I am a member of the City Council and do not like a man, I don't care what my reason is. I do not like him and am moved by that to oppose anything he proposes before that body. Not a high standard of public action, I agree, but it is not indictable. There must be something more than that. Now the only thing you can make out of this charge is "unless you pay this money I will oppose this bill." Now where was that agreement made? There was no agreement at that time; there must have been some assent to that proposition by the two parties. Now Stock must have directly or indirectly, he must have said "Here I will pay you \$9,000 if you will not oppose that bill." That must have been the counterpart of that proposition on his part. Meysenburg must have said something in form: "If you pay me nine thousand dollars I will not oppose the bill."

The COURT. The question I ask is whether if a man made use of threats and I believed him so much so that I produced my money and turned it over whether I did not agree, whether that was not the agreement such as stated in the indictment, a meeting of the minds or not.

Mr. Lehmann. A thing done under compulsion cannot apply.

The COURT. I was not stating it as being analagous to a case of robbery. I was trying to get at your idea of the word "agreement."

Mr. Lehmann. It means the concurrence of the minds of two or more persons upon the same proposition.

The COURT. That is what I supposed.

Mr. Lehmann. It must be the concurrence of the mind of two or more persons. Now turn to the dictionaries of the law and they all give it in that form, and the statute here implies that because

it uses the word. You cannot reject it; you cannot put another word in place of the statute.

In other words there must be a subject-matter which is before the official for consideration. Now in order that an offense be committed, it must state a gift, reward, gratuity or bargain therefor under some agreement with reference to his action upon the subject-matter pending before him. Now with whom is that agreement made? Manifestly it must be made with the person who offers the gift, consideration, gratuity or reward. It must be with him, or made with his representative, but it must be made with the person who offers the gift, gratuity or reward. And that agreement must have relation to the subject-matter pending before him in his official character. In other words the person must want him to do something with respect to that, or want him to refrain from doing something with respect to it; an agreement for affirmative or negative action, but there must be an agreement with respect to that subject-matter. Therefore it is stated in the statute, therefore it is charged in the indictment and it must be sustained by the proof. Now simply coming to the gratuity because they make no sort of a stipulation with respect to it, simply say "Here is a man who has a grievance; throw a bone to the dog; do something to heal his grievance." "Ought not he to agree to something, when we pay him this money?" "Oh, no, take chances, do nothing of the kind." Does that meet the statute where an agreement is specifically called for?

The Court. You have the word "bargain" in your mind, not "agreement." A bargain is more than an agreement, includes an agreement and something besides.

Mr. Lehmann. A bargain is not a one-sided declaration. But we have the word "agreement" to deal with. Now it has a significance, and what is that significance? You cannot find in any law book any definition of an agreement, being employed in any legal sense where there is simply one person to the agreement, and no one else contemplated. That is impossible. It means the concurrence of two or more minds. He must agree with somebody; he must agree to something.

Mr. Krum. The embarrassment under which the Court labors is due to this indictment itself and it can be due to nothing else. The indictment proceeds upon the theory of an agreement, but its averments show that there could by no possibility have been such an agreement. It is beyond the capacity of the finite mind to make any such agreement as alleged in this indictment.

What the indictment alleges when it is properly construed is simply this—not that the defendant agreed that he would do certain things unless a certain amount of money was paid to him, but that he asserted, that he threatened, that he declared his purpose to be to defeat this bill unless he was paid so much money, and accordingly the threat was yielded to, acquiesced in and the money was paid him. That is not within this statute. That may be a process of extortion if you please, in public office, but it is not

the acceptance of a bribe under the provisions of this statute, and there is a vast difference between the two situations.

I say it is absolutely impossible for anybody to make the agreement which is alleged to have been made by the defendant in this indictment. Why? If a highwayman stopped you on the street with the declaration, "Your money or your life," that is not agreement upon his part to kill you unless you turn over your valuables to him; yet that is the proposition here and nothing else but that proposition. There is the threat that unless the demand is yielded to the consequence will follow. But, if the Court please, does this circumstance evidence an agreement on the part of the highwayman to kill you unless you give up your money.

The Court. Suppose I look and see the expression of his countenance, the weapon that he has in his hand, and become convinced that his words are true?

Mr. Krum. That does not evidence any agreement on his part to kill you unless you yield to his demand. This indictment simply states circumstances which go to prove what is popularly known "a holdup," and that is all there is to it.

This defendant stands precisely as the highwayman stood, or would stand, in the situation presented by your Honor. It does not come within the statute. How, if the Court please, would it be possible for a man to agree—let us look at the situation from a common sense standpoint leaving all speculation aside. How can it be possible for a man to agree with somebody that unless he is paid so much money he will oppose the passage of a certain ordinance? How can it be possible for a legislator to make any such agreement as that with anybody in regard to any possible legislation or species of legislation pending in the Assembly? How can it be possible to be done? It is not an agreement at all, and that is the infirmity of this indictment.

Now suppose this case went to the jury as it is now situated; How would your Honor instruct? How can your Honor conceive of a theory of law based upon this indictment and the facts before the Court that can stand the test of legal scrutiny, without an agreement? Your Honor stands confronted with the absolute impossibility as a lawyer and a judge. You cannot, under this indictment, in the face of these facts adduced, and the statute, intelligently instruct the jury as to what they are to do as between the State and the defendant.

Now a threat is made and the threat acquiesced in; with a threat made and the threat yielded to, the man who yields to the threat does not become a party to an agreement made by the making of the threat. He yields to the demand, he recognizes the exigency and proceeds under compulsion, but he does not agree; neither does the individual who brings forward the threat have in bringing it forward any agreement on his part whatever. There is no agreement about it, and that is the infirmity of the entire situation and I respectfully urge upon the Court that it is the cause of all the embarrassment under which your Honor has necessarily suffered in this matter.

The Court naturally does not propose to place the slightest obstacle in the path of the State in bringing to justice offenders of this character. There is no such purpose on the part of the Court. There can be none. But, sir the embarrassment under which you undoubtedly labor results from this indictment because it recited an absolutely impossible condition of affairs, because there could not have been any such agreement in the first place. It is not an agreement. Now, if they had alleged, and it would have been just as easy to allege—if they had alleged that Meysenburg was opposed to the bill, that he agreed—they need not say anything about express agreement—that he agreed with Stock in consideration of the payment to him of so much money, in consideration of the transfer to him a check calling for so much money, that he would upon payment of that money thenceforward favor the bill, they would have stated a case within the statute.

But what do they do? They say that the footpad agreed to kill the victim, he made that threat and the victim yielded rather than to be killed, and therefore it was an agreement evidenced by this circumstance, first on the part of the proposed murderer to kill unless he received a gratuity, and an agreement on the part of the victim to give up the money so that he might escape with his life. There is the situation, there is the agreement and they seek to deduce from that state of facts, which is absurd from any standpoint, an agreement under those conditions.

To look at it again. Which one of these two words are you going to choose? If you take "unless" you will come nearer a sensible conclusion as to the position of the parties. If you take the word "until," why, if the Court please, the absurdity of the situation is so accentuated that one almost ought to be rebuked for dwelling upon it at all. The idea that a member of the Municipal Assembly could agree that he would oppose the passage of a bill until he was paid \$9,000; if he could make any such agreement as that which could come within this statute. It is part of his duty to vote on every bill that comes up—but here according to this indictment this member of the Assembly agreed he would oppose the bill until he was paid \$9,000 and then if he was paid the \$9,000 he was not to do anything.

That is the situation. The agreement was fully performed at once upon the payment of the money so far as the giver of the bribe was concerned. It was fully performed on the part of the acceptor of the bribe because the opposition then and there stopped; but nothing, if the Court please, was to be done; nothing was in contemplation in the future as to any action on the part of the legislator himself. How completely ridiculous, and nonsensical is such a situation as that contemplated by anybody who has any conception of the legal situation or propositions involved with reference to matters of legal construction.

Your Honor's attention has been called to this statute time and again, and the difference between the two sections, I take it is thoroughly appreciated. It does not make any difference so far

IX. AMERICAN STATE TRIALS.

as the giver of the bribe is concerned whether there was any agreement made with him or not; it has all to be determined by his intention, and if it is his intent to lead the legislator astray and induce him to violate his duty, it does not make any difference whether the legislator appreciates the situation or not, it is not essential to constitute the crime on the part of the giver of the bribe that there is any arrangement between himself and the legislator. What the statute denounces is the intent of the giver, and it leaves out the acceptor of the bribe and brings him under the influence of the section where he is held subject, and subject only, to the consequences of a corrupt agreement.

Now here there is no testimony that there ever was any agreement, express or implied, between Philip Stock and Emil A. Meysenburg as to any action to be taken by Meysenburg upon the so-called Suburban bill. He did not agree to do anything; he did not agree to vote; he did not agree to oppose; he did not agree to defeat; he did not agree to withstand, or to thwart, or to do anything else. He made no agreement; Meysenburg did not indicate anything to Stock as to what he would do, nor did Stock indicate anything to Meysenburg as to what he expected Meysenburg to do; and accordingly if there was no indication one way or the other there could not have been any agreement.

THE COURT. Is it true the agreement in this case means a return promise?

Mr. Krum. Yes, it must mean that. There can be no such thing as an agreement unless both of the parties acquiesce in a given proposition in the immediate situation, either by reason of the action of their own will and concurrence of their own mind, or by reason of the circumstances under which either is to be held to the consequences of his act; because otherwise there would be a defeat of justice in so far as the other party is concerned. That is what must stand to constitute an agreement upon the one hand. If wills operate in the same direction you have an express agreement. If the situation is such that assent is to be drawn from or concluded you have an implied agreement. If the circumstances are such that the party last to be heard said that he did not assent, he did not agree. There you have the two situations; and I respectfully submit that you must arrive at the idea of an agreement by some one in those two situations. Now apply that rule to this case. What did Stock ask Meysenburg to do? Nothing, except to turn those shares of stock over to him. He did not ask him to do anything about the Suburban Railway bill. What did Meysenburg tell Stock he would do in regard to the Suburban Railway bill? Nothing further than this, if this is to be taken as an assertion by Meysenburg as to what he would do, if the occasion arose—nothing further than this: "I wish you to understand that this transaction will have no bearing whatever upon any vote of mine in regard to the Suburban Railway bill." That is the sum and substance of the situation before the Court. The evidence of one of these parties indicating to the other that the suggestor of

the bribe wished or proposed to the acceptor to do something and on the other hand that the proposed acceptor suggested to the would-be giver that the gift was made on the gratuity paid because of contemplated action. There is no such situation as that. The situation is, as I have asserted in the first place: simply a threat on the part of Meysenburg, a declaration on the part of Meysenburg, an avowal on the part of Meysenberg, a member of the upper house of the Municipal Assembly, that unless so much money was paid him he would oppose this bill, and thereupon the money was paid.

Now where, if the Court please, is the idea of an agreement to be found to oppose that bill unless the money was paid? And the whole thing resolves itself back to the proposition from which we started: The difficulty results from the indictment itself; from the fact that it is beyond human ability to devise a situation of this description, such as having an agreement between two parties, one of whom has a threat made to him, the other of whom simply yields to the threat.

The COURT. I would like to hear from the State on the variance between the allegation of the payment of money and the evidence showing payment of a check.

Mr. Folk. In the first place the defendant got nine thousand dollars; that is conceded by the defense itself. In the next place, if it were a variance the Court would have to find it was such a variance as prejudiced the defense of the defendant. Now what do we find here? We find in the opening statement made by defendant's counsel a statement made to the jury that this defendant got nine thousand dollars in a check, just as the proof subsequently developed. We find the defendant's counsel stating to the jury that the defendant took this check to the bank and exchanged it for another check for \$8,966. We find defendant's counsel stating what was subsequently proved. We do not find a state of surprise; we do not find the defendant coming here expecting proof of the payment of \$9,000 in cash there at that time; we find them expecting just such evidence as was introduced. When the check itself was introduced in evidence we find there was no objection to it, although every other kind of proof was objected to, yet they assented showing there was no surprise, there was no claim then of any variance, not at all. There has been no prejudice to the defendant's rights here; there has been no prejudice to his defense; they cannot claim that.

Now this indictment is broad enough in this case if this defendant should be acquitted to prevent any other charge from being subsequently brought in this same matter.

Mr. Krum asks, if this defendant were acquitted and a subsequent indictment were had, using the language of "check" instead of "money" as to whether the plea of former acquittal would avail. Certainly it would, the payment of the money was but an incident to the corrupt agreement, that was the main thing, the agreement, regarding the Suburban Railway Co., and any sub-

sequent indictment, using the language "check" instead of "money" would not avail against the plea of former acquittal, if the defendant should be acquitted in this case. It is very plain the defendant has not been prejudiced; it is very plain the evidence was just what was expected; they have not been misled, no right of the defendant has been affected in any way. It is also apparent from the evidence that he got the \$9,000.

Mr. Maroney. Even if we did not prove there was \$9,000 paid that cuts no figure; we have proved a sum was received. The proof is here that he got from the German Savings Institution thirty-three dollars and some cents in money. Stock paid by check and the money was received on the check. Now Mr. Lehmann made the proposition that a check or note is not payment. That is payment, this was understood and agreed and the money was paid. And the proof here is that after the money was paid and that matter was not disputed; it was agreed to by Stock. That money would be sufficient under this indictment to carry this matter to the jury and I apprehend that under the law the Court will instruct the jury, if they find the sum of \$9,000 or any other sum was paid to this defendant, that he is guilty under this indictment.

Mr. Lehmann. I want to correct the gentlemen as to the testimony. The testimony is that Stock had this check for \$9,000 payable to his own order and that of Meysenburg jointly; that Meysenburg then and there paid Stock the money; and it is the difference between the statement of Meysenburg and the face of the check. The payment of the money was the other way. Stock never paid him one penny, and whatever money was paid, was paid on the check by the bank.

The COURT. I am perfectly aware of the situation. The only question on which the Court wants light is the variance between the indictment and the proof.

Mr. Lehmann. As to that there can be no question at all. My Brother Folk says the receipt of money is not material, that is not it, it is the corrupt agreement. But the difficulty is the agreement could not be corrupt except as connected with money. For example, I being a member of the City Council, a bill pending and a man came to me and said, "Will you vote for this bill?" "I have been trying to get people to do that same thing. Will you vote for this bill?" They say, yes, they will. I might agree to vote for it; that is not a corrupt agreement. But it is the money, the gratuity, that makes it.

JUDGE DOUGLAS. It seems to me that the gist of the offense is the accepting of a gift, consideration, gratuity or reward under an agreement as is mentioned in the statute, section 2085. I think under this statute 2534, the variance is not material, and in regard to the other point, I am confident that the position taken by the defense, that the allega-

tion in the indictment that the agreement was an express agreement, makes it necessary that an express agreement be proved is correct, but I think it is for the jury to decide on the evidence as to whether that evidence shows an express agreement. It is not required by law that an express agreement be established by the exhibition of writing in which it is set forth or that the witness recite the words used by the parties or either of them, but the fact that an express agreement has been entered into may be shown by any testimony tending to establish the fact or by circumstances testified to by the witnesses.

Under this view I will let the case go to the jury, and defendant's demurrer is overruled.

THE WITNESSES FOR THE DEFENSE.

Emil A. Meysenburg. Am the defendant in this case. In 1891 I purchased a lot for the Citizens' Electric Light & Power Co., advancing the money for the company. In 1897 the property had depreciated \$10,000, and to secure me for this depreciation H. J. Hanford, George J. Kobusch and Charles Sutter each gave me a note for \$3,333.33, bearing interest, secured by three certificates of 100 shares each of stock of the Electrical Construction Company. A year later Hanford paid his note and 100 shares were returned to him. In 1898 I surrendered the other two notes to their makers upon a personal agreement with Sutter to secure his claim. I retained the shares of stock and later had them made out in my own name.

Charles B. Stark was a director in the Construction Company, and in 1896 caused an examination of the books to be made.

First saw Stock in reference

ence to the purchase of my stock on February 2, 1901. Stock came to my office alone. Kratz was in my private office when Stock entered, but was not there by any previous arrangement with me. Stock told me he heard I had 200 shares of stock, and offered me \$45 per share for them. I said I could not sell them at that figure, as I held them only as collateral and only wanted the amount due on them. At his suggestion the stenographer calculated the amount—\$8,966.52—and handed the statement to Stock. Stock gave me a check for \$9,000, and I gave Stock in currency the balance between the amount due me and the face of the check. I did not say to Kratz, "Charley, you know I only want what is fair and square." I did not say to Stock, "Remember, this is only a strict business transaction and will not influence my vote on the Suburban bill." Kratz did not say when Stock entered, "Here is Stock to see

about buying those shares." Stock did not say when he came in, or at any time, "I understand the Suburban people have not treated you right. I am here to show we do."

Kratz had never intimated to me that the Suburban people stood ready to buy my stock, although Kratz had on one or two occasions spoken to me about the sale of my stock. The details of the conversation I cannot recall. When Stock gave me the check nothing was said of the Suburban Railway Company or the bill in the Council. To no one at any time had I said that after the purchase of the stock would I take action favorable or otherwise on the bill. I had never objected to the bill being reported by the committee.

I became a member of the City Council on January 19, 1899. Have lived in St. Louis forty-four years; first was employed in a grocery store at \$60 a month; in 1866 became chief clerk of the U. S. Treasury here; in 1872 became cashier of the German-American Bank, remained there nine years and was then cashier of the Laclede Bank for two years; was for a time cashier in the water rates office and then a teller of the Boatmen's Bank for seven years, when in 1889 I went into business on my own account.

I took the \$9,000 check to the German Savings Institution after banking hours, and received in exchange a cashier's check for \$8,966.58 and \$33.42 in currency. I did this so that the cashier's check would bear a record of the exact amount due on the stock and because I needed the currency for the day follow-

ing—Sunday—having given all my available change to Stock.

Never told Stock or anyone else that I would oppose the Suburban bill unless I received \$9,000; had no agreement or understanding of any kind with Stock or anybody regarding my action on the bill, and the disposition of this stock to Stock had no influence on my action toward the bill.

Cross-examined. Never had any negotiations with Stock in reference to the purchase of my shares of stock; had never spoken to Stock about the shares until February 2, 1901, when Stock came to my office with the check; was not aware that there were any negotiations on for the purchase of the stock; did not then know that Stock was the legislative agent for the Suburban bill and that the \$9,000 was furnished by the Suburban people. When I took the \$9,000 check the Suburban bill had been reported by the committee and was before the Council. I deposited the \$9,000 check, payable to myself and Stock, in the German Savings Institution instead of in the Boatmen's Bank, where I had a personal account, because it was closer to my office by two blocks, and because I could not obtain from the Boatmen's Bank a cashier's check on a check of the German Savings Institution. It was not because I wished to conceal any part of the transaction.

I paid for the ground which I purchased for the Citizens' Electric Light & Power Co. in 1891, more than \$16,666.

And in 1897 the property depreciated in value \$10,000, to secure me against which Han-

ford, Kobusch and Sutter gave me their notes for that amount, collectively. Hanford later paid this note, amounting with interest to \$3,500. The other two notes, representing the balance of the \$10,000, were secured by the 200 shares of stock. I still have the property.

William H. Thompson. Am president of the Bank of Commerce of St. Louis; have known defendant ten or twelve years; know the people whom he has been associated with in business; his reputation among them for honesty and upright conduct is good.

William R. Donaldson. Am an attorney; have lived in St. Louis fifty-four years; have known defendant for thirty-five years; his reputation among his business associates for honesty and upright conduct is the very best.

Isaac W. Morton. Am a hardware merchant; have lived here

forty-five years; have known Mr. Meysenburg for thirty-five years; his reputation among his business associates is good.

Charles B. Stark. Am a lawyer; owned 350 shares of the stock of the St. Louis Electrical Construction Co.; sold them in March, 1900.

Mr. Krum. To whom did you sell them and at what price?

Mr. Folk. Objected.

The COURT rules that the evidence was not admissible.

March 27.

Frederick N. Judson. Am a practicing attorney in this city.

Mr. Krum. Did the defendant consult you personally about the first of February, 1901, as to a claim of his against members of the Kinloch Syndicate arising out of the conduct of the St. Louis Electrical Construction Co.?

Objected to and objection sustained by the COURT.

THE INSTRUCTIONS TO THE JURY.

JUDGE DOUGLAS. Gentlemen of the Jury: By the indictment in this case which was found and returned into court on the first day of February, 1902, the defendant is charged with the offense of bribery. The defendant pleads not guilty.

It is the duty of the Court to instruct you on all questions of law arising in this case, and it is your duty to receive such instructions as the law of the case and find the defendant guilty or not guilty, according to the law as declared by the Court and the evidence as you have received it under the instructions of the Court.

First. If, upon consideration of the evidence, in the light of the Court's instructions, you believe and find from the evidence, that, at the City of St. Louis, State of Missouri, at any time within three years next before the finding of the indictment in this case, the defendant, Emil A. Meysenburg, was a member of the Council of the City of St. Louis; that there was pending and undetermined before the said City Council (of which defendant was such member) a proposed ordinance known as Council bill No. 44, whereby it was proposed that the City of St. Louis should grant certain privileges and franchises to the St. Louis & Suburban Rail-

way Co.; that while said proposed ordinance was pending and undetermined before said Council defendant, as member of said Council, directly or indirectly, accepted and received from one Philip Stock the sum of nine thousand dollars (or any other sum), as a gift, consideration, gratuity or reward, and upon an express understanding and agreement with the said Philip Stock, that unless and until the said sum was so paid to the defendant by the said Philip Stock (as the ostensible price and consideration of and for certain shares of stock in the St. Louis Electrical Construction Co. then and there held by the defendant, or as the ostensible settlement of a certain claim held by the defendant against the Citizens' Electric Lighting & Power Co.) the defendant as a member of said Council and in his official capacity and character as such member, would and should oppose and resist the passage and enactment of the said proposed ordinance then pending before the said City Council; that said Philip Stock was then and there acting for and in behalf of the said St. Louis & Suburban Railway Co., its officers and members, with relation to said bill, and that said Meysenburg knew that he was so acting, you will find the defendant guilty of bribery as charged in the indictment, and assess his punishment at imprisonment in the penitentiary for a term of not less than two or more than seven years; and unless you find the facts so to be you will acquit the defendant.

Second. By the terms "express understanding and agreement" as used in the indictment and in these instructions, is meant the concurrence of the minds of two persons upon the same proposition which has theretofore been set out by one or both of said parties in words or by other conventional signs of a defined meaning.

And an express understanding and agreement made between two persons through the instrumentality, in whole or in part, of a third person amounts to the same thing.

Third. If you believe and find from the evidence that the defendant accepted and received the said sum of money under the circumstances and upon such an agreement, as above set forth, it is wholly immaterial whether or not defendant made any agreement as to what he should or would do after receiving such money.

Fourth. The jury are instructed that for the purposes of this case it is immaterial whether the money paid by Stock to defendant was paid in cash or by a cashier's check on which the money was afterwards collected by the defendant.

Fifth. The law presumes that business transactions between parties are made in good faith, and it devolves upon the State to show beyond a reasonable doubt in this case, not only that the defendant, Meysenburg, sold the shares of stock to the witness Philip Stock, not only that the defendant Meysenburg accepted and received the \$8,966.58 (or some other sum) for said stock, but the State must show and beyond a reasonable doubt that the said Meysenburg received said money under an express agreement that unless and until the said money was paid, he, as a member of the City Council, would resist and oppose the said proposed ordinance known

as Council Bill No. 44, and unless the State so shows said facts you should find the defendant not guilty.

Sixth. The jury are instructed that even though they may find from the evidence that witness Philip Stock had a corrupt purpose in buying the shares of stock in question, and intended the money paid by him as a bribe to influence the defendant in his official action respecting the Suburban bill, still if such corrupt purpose was not assented to nor participated in by the defendant and he made no agreement with said Stock respecting his official action, then the jury are instructed that the defendant is not guilty, and the jury must find the defendant not guilty.

Seventh. The jury are instructed that by the indictment the defendant is charged with receiving nine thousand dollars as a pretended consideration for shares of stock, but in fact upon the express agreement made with the witness, Stock, that unless defendant was paid said money he would oppose the passage of the said Suburban bill, and unless the jury are satisfied by the evidence beyond a reasonable doubt that the defendant did receive such money under such an express agreement made by him with said Stock, they must find the defendant not guilty.

Eighth. The defendant is a competent witness in his own behalf, but the fact that he is a witness testifying in his own behalf, and the interest he has at stake in this case, may be considered by the jury in determining the credibility of his testimony.

Ninth. You are further instructed that the indictment contains the formal statement of the charge, but is not to be taken as any evidence of defendant's guilt.

The law presumes the defendant to be innocent, and this presumption continues until it has been overcome by evidence which establishes his guilt to your satisfaction and beyond a reasonable doubt; and the burden of proving his guilt rests with the State.

If, however, this presumption has been overcome by the evidence and the guilt of the defendant established to a moral certainty and beyond a reasonable doubt, your duty is to convict.

If, upon consideration of all the evidence, the jury has a reasonable doubt of the defendant's guilt, you should acquit; but a doubt to authorize an acquittal on that ground, ought to be a substantial doubt touching the defendant's guilt, and not a mere possibility of his innocence.

You are further instructed that the previous good character of the defendant, if proved by the evidence to your reasonable satisfaction, is a fact in the case which you should consider in passing upon his guilt or innocence, for the law presumes that one whose character is good is less likely to commit a crime than one whose character is not good. But if all the evidence, including that which has been given touching the previous good character of defendant shows him to be guilty, then his previous good character cannot justify, excuse, palliate or mitigate the offense.

You are further instructed that you are the sole judges of the credibility of the witnesses and of the weight to be given to their

testimony. In determining such credibility and weight you will take into consideration the character of the witness, his manner on the stand, his interest, if any, in the result of the trial, his relation to or feeling towards the defendant, if any, the probability or improbability of his statements, as well as the facts and circumstances given in evidence. In this connection you are further instructed that if you believe that any witness has knowingly sworn falsely to any material fact, you are at liberty to reject all or any portion of such witness' testimony.

Tenth. The argument of counsel is for the purpose of aiding you to reach a proper verdict in the cause by refreshing in your minds the evidence which has been given to you in this cause, and by showing the application of the law thereto; but whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it to be, and by the law as given by the Court in these instructions, and render such verdict as in your conscience and reason and candid judgment seems to be just and proper.

Eleventh. In order to find a verdict in this case either of guilty or not guilty the jury must be unanimous.

THE SPEECHES TO THE JURY.

Mr. Bishop opened for the State and was followed by *Mr. Lehmann*, who excoriated Philip Stock, Charles Kratz and Charles Turner, and vindicated Meysenburg as an honorable business man, placed by a peculiar combination of circumstances in a false light. He shared, he said, in the desire for the regeneration of the city, but that task should not be commenced by condemning a reputable man on the testimony of a confessed briber. When the picture of the renaissance St. Louis is painted it will bear the face of Charles Turner and Philip Stock, perched together like Raphael's cherubs, the twin conservators of public safety and regenerators of public morals. He reviewed the circumstances of Meysenburg's claim, which he declared to be an absolutely honest and valid one.

CLOSING ADDRESS OF MR. FOLK.

Mr. Folk. If the Court please, and gentlemen of the jury, when you find paint upon the lily or artificial perfume upon the rose, there is a suspicion in the one instance of the original

whiteness of the lily, and in the other of the original sweetness of the rose; so when you find so-called innocence defended with such eloquence, there is a suspicion of the innocence that so much eloquence defends.

After all this pyrotechnical display of words you have heard, I would have you to go back with me to the main issue in this case, and that issue is not regarding the Kinloch Syndicate; that issue is not regarding some foreign matter that they have endeavored from the beginning of this case to bring here to confuse this jury, but that issue is—has this defendant been guilty of corruption in office by bribery under the facts in this case? These gentlemen appearing here for the defense are employed for that purpose and they do their duty well. We who appear for the State have the same motives, the same interest as you have. We are here for a common purpose, in a common cause, to vindicate and uphold the law, you as jurors and I as the Circuit Attorney. Gentlemen, Mr. Lehmann speaks of the infamy that is supposed to attach to the informer. That is no new gospel he preaches. You can hear the same doctrine in every den of thieves and haunt of crooks in all this city, and all this land. It is the thieves' doctrine that one shall not tell on the other. If that doctrine could meet the sanction of the jury it would delight every thief and every crook in this city and everywhere. If we do not have a man to turn State's evidence then how is the law going to be vindicated in a case like this? It would take away from us the very means to prove that bribery. How are we going to prove it without witnesses? It is a peculiar incident of human nature that criminals, no matter how depraved they may be, pride themselves on never breaking their word with their fellows. The jail, the penitentiary, or even the gallows, hold no infamy for them, but if one criminal desires to bring upon his head the denunciation of his fellows, let him turn State's evidence. I say that one who has committed an offense is more to be honored for confessing than in concealing it. When one has committed a crime the highest atonement he can make is to kneel at the feet of justice and tell the truth. Why, gentle-

men, they would get off, not only in this case, but in every case where crime is done in secret, without witnesses, if this doctrine announced here by Mr. Lehmann were adopted; every crime done in secret where there are two parties both guilty, would have to go unpunished, and the law have to go unvindicated. I do not appear here to defend any man who has appeared as a witness for the State. I say, that we are trying this case now, the case of this corrupt man, and we will attend to the cases of others later on. Let us consider this case and not the case of some other man. These gentlemen from the beginning of this case have attempted to bring in outside issues and to have you consider everything but the main issue in this case. Now, here is a member of the City Council charged with bribery, a serious offense if found guilty. I say his crime hangs like a pall of infamy over this city, and not until he be punished by meting out the penalty of the law can the public disgrace be removed and proper rebuke given to a public official using his office for private gain and not for public good.

Bribery, gentlemen, is not between private individuals. Whatever moral turpitude there may be in one private individual having another private individual to do or not to do something, that is a matter with which the law is not concerned; but when an official is corrupted, then the law steps in because the law seeks to hold all official acts above corruption and debauchery. Under our system of government all power and all authority is vested in the people, the people rule, the people govern. The people can act only through their chosen representatives, they select some officials to make the law, others to interpret the law and others to enforce the law. All authority possessed by any official must trace its chain of title back to the people. All official power belongs, not to the public official, but to the people he represents and who gave the power. The legislator's vote and his influence is not private property, but that of his constituents. It is given him by the people as a sacred trust to be administered for the public good, and if there be in the category of crime, one that is greater

than all others, the unpardonable crime, it is the offense of him in whom such sacred trust has been reposed and who uses it for his private gain and enrichment.

Were all officials corrupt, if all officials' actions were for sale, then government would soon become the debauching tyranny of the few with wealth enough to purchase it. In this case, we have an official elected by the people, charged with certain solemn and sacred duties, a trust reposed in him by the people. Has the evidence in this case shown him to be a good and faithful public servant or not? Is he the good and faithful servant, public servant, according to your ideal? He may be according to Mr. Lehmann's, but his ideal of the public official cannot be mine if this is his standard.

We find this official in the City Council with a bill pending before him, pending before the very committee of which he is a member; we find this official plotting and telling members of the committee that he has some supposed claim against the men behind the bill, showing that he knew from the beginning where this money was to come from and subsequently did come from. We find Philip Stock after weary weeks when nothing was done with the bill, we find him going to Mr. Kratz and saying to him: "What is the matter with our bill?" Kratz says "Meysenburg is the trouble; he has a grievance." Stock says "Go and see what Meysenburg wants." Kratz comes back and says "Meysenburg wants nine thousand dollars." Stock says that he will see Mr. Turner. Turner goes to the bank and gives his note and Mr. Nicolaus' for nine thousand dollars. Stock gets the check for nine thousand dollars and he and Kratz go together to Meysenburg's office. Now mind you, Kratz saw Stock regarding the nine thousand dollars five or six times, showing that Meysenburg and Kratz had held frequent conferences about it and had determined just what they would do. When Stock went with Kratz to Meysenburg's office he found everything waiting and everything ready. Mr. Kratz says to Mr. Meysenburg: "Here is Mr. Stock, he comes to take those shares." Mr. Stock says to Mr. Meysenburg: "Why are you sore? Why

are you fighting us?" Mr. Meysenburg says: "Because you people have not treated me right." "Well," says Mr. Stock, "these shares are not worth a cent, but there is the nine thousand dollars." Mr. Meysenburg takes and delivers the shares of stock and this alleged statement and as Mr. Stock goes out the door Mr. Meysenburg said: "Now, Mr. Stock, I don't want you to think this is going to affect my vote on the bill." Why did he say that? He was trying to cover up his tracks again. He tried to make a record for future use, but the very attempt he made there, as in subsequent efforts, served not to cover up, but to uncover and show his corrupt purpose and corrupt motive. It shows that he knew that Mr. Stock paid him that money to influence his official conduct; it shows that at the time this nine thousand dollars was handed to him he knew that Philip Stock got this from the Suburban or its officials and that this nine thousand dollars was intended to influence his official conduct.

Now, he takes this check, not to his own bank, but to the Mechanic's bank first, not even to the bank it was drawn on, attempting to cover up his tracks. You find in every crime when the criminal attempts to cover it up, no matter how careful he may be, he always leaves a trail behind that sooner or later will let that crime be known. Here in this effort to cover up this crime he goes to the Mechanic's bank, although he perjures himself and says he did not, and goes to Mr. Austin and asks him to cash it. Mr. Austin refuses. Then instead of going to his own bank he goes over to the German Savings Institution and shows it to Mr. Hospes,—he denies this, and when he denies it he perjures himself, because I would believe Mr. Hospes before I would a man like this who has shown himself up in this transaction; he goes to Mr. Hospes and shows it to him and says: "I have given value for it." Mr. Hospes says: "I am glad of it." And he gets another cashier's check for the very amount of this alleged statement and takes the check and puts it in his bank. If he had not known this was a crooked transaction, why couldn't he have taken this check to his own bank just as well as to some other

bank. Doesn't that show his knowledge of the corruption with which the transaction was tainted and doesn't it show that he had been guilty of corruption in office and that he knew it?

There is a peculiar thing about the certificates and this alleged claim. Which is it? Is it the claim or the certificates that the defendant's counsel says Philip Stock bought? They say one thing one time and another thing another time. One of them said that he bought the certificates and that the certificates had value. Another of them says he did not buy the certificates at all, but he bought this alleged claim of the Citizens Electric Light Construction Co., which is a ten-year old claim. What on earth could Philip Stock want with an old claim against the Citizens Electric Light & Power Co.? What motive could there have been in him buying an old claim? It was not against him. It was not against any of his friends. What motive could Mr. Turner and Mr. Nicolaus have to put up nine thousand dollars to buy that old claim? Do you think that they put up that money for charity? Do you think that money was put up by Mr. Turner and Mr. Nicolaus simply to help this man along? No, it was put up not to buy a worthless claim, not to buy worthless stock; it was put up to buy Meysenburg and it bought Meysenburg, and Meysenburg knew when the transaction was going on that Mr. Stock wanted to buy, not these certificates, not this fake claim, but that he wanted to buy Meysenburg and Meysenburg agreed to it and sold himself for the nine thousand dollars. Can you put any other construction on the transaction? Did he use his official position to get this money? Is there a man on this jury that doubts that Mr. Meysenburg used his official position to get the money? If there is one, you stand alone of all who heard this evidence. If a man in official position has a piece of property worth, say five thousand dollars, I will say a judge on the bench, and a man has a case before him, the Judge goes to that man who has his case before him and says: "I want ten thousand dollars for this piece of property." He gets five thousand for his property and gets five thousand dollars, the proceeds of the prostitution of his office. If I had

a man under an indictment and I had some certificates of stock worth one thousand, and I go to him and say: "I want two thousand dollars for the certificates," and he pays it to me, I get one thousand dollars for the certificates and one thousand dollars, the proceeds of the prostitution of my office. If an official or legislator before whom a bill is pending has negotiations with those interested in the bill, and there is some property or some alleged claim worth a thousand dollars and he says: "I want nine thousand dollars for this," and gets it, he gets one thousand dollars for his claim; the other eight thousand dollars is the result of prostitution of his office, and if the claim is worthless and the stock of no value he gets the whole nine thousand dollars as the result of the prostitution of his office by using his office, not for the public good, but for his private gain. That is the thing that the spirit of the statute denounces; that is the reason of the law against bribery, to keep official conduct untainted so that the laws may not be corrupted at their source. A corrupt official is worse than a thief, because the thief only plunders while the corrupt official violates the trust reposed in him and the oath he has taken.

He is worse than a murderer, for the murderer only takes one life against the law, while he strikes at the very foundation of the law itself and makes the passage of laws a matter of bargain and sale. He is worse than the anarchist, for the anarchist is at least openly opposed to all government while the corrupt official under the guise of respectability and cloak of law sells that which does not belong to him, but to the people, and by stealth and hypocrisy poisons the very source of law and prostitutes himself to venal ends. We have in this case, an official who has proved a traitor to his constituents, a traitor to the people and a traitor to the trust reposed in him. Now, they say, where is the "express agreement?" Why, gentlemen, the Court charges you that an agreement may be expressed by words or by certain signs that may have been previously agreed upon or defined. An expressed agreement means what it says—an agreement that is expressed in some manner, expressed in words, not necessarily by writing, not

necessarily by words even, it may be by signs or other things or conduct even. Now, in this case, is there not evidence in the conduct of this defendant and the go-between, Charles Kratz, to show that Philip Stock made a corrupt agreement, an expressed agreement with Mr. Meysenburg? Is there not enough in here to show you that he did? Can you explain this remarkable conduct of this defendant upon any other hypothesis than that he did have an expressed agreement, that he must get his money or he would oppose the bill? When he gets the money, though the bill had been languishing for many months, six days afterwards it was passed. You cannot expect to find in bribery a contract written out. You cannot expect the bribe giver to say to the bribe taker: "I hereby bribe you;" nor the bribe taker to say: "I hereby accept a bribe." It is not to be expected that Mr. Meysenburg, after taking this bribe, would post in his office a sign—"I have taken a bribe from Philip Stock." When they engage in nefarious transactions in infamous schemes they do not do that. They say as little as possible and they leave as much as possible unsaid. But in bribery, as in every other case, you can take the conduct, you can take the acts, you can take the words that are said and you can find from these things that you do have what was actually done. What was the actual thing in their minds? This evidence shows that there was a purpose in the mind of Philip Stock in going to Mr. Meysenburg's office to buy, not the stock, but Meysenburg, and it shows that Meysenburg's mind met the mind of Philip Stock and he agreed to sell Meysenburg and did sell him.

Now they talk of this thing being a business transaction. If an official uses his office for his private gain they call it business. If an official uses his office to graft they call that business. I call it corruption. There has just come to my mind a certain business transaction that was had some nineteen hundred years ago. I will read it to you:

"And Jesus went into the temple of God, and cast out all them that sold and bought in the temple and overthrew the tables of the money changers and the seats of them that sold doves, and said to them, It is written my house shall be called the house of prayer, but ye have made it a den of thieves."

If Mr. Lehmann were there he would have said: "It is a business transaction, this changing of money, this selling of doves in the temple;" but it was the Nazarene, and he scourged the money changers and those who were trying to make a profit out of the temple. So there are in the temple in which our laws are made those who are trying to make an unholy profit out of the place, and it is for this jury to do like Christ did and run them out and keep them from making what should be the temple of law, a den of thieves, as it now is.

Gentlemen, can there be any doubt in your mind on this evidence that the defendant held up the Suburban Railway until he got nine thousand dollars? Can there be any other explanation of it to the mind of any reasonable men? If there can I fail to see it. I cannot explain this peculiar check system, this putting up a claim that was no claim at all to hide some real transaction. If he had not had that old claim or alleged claim, he would have brought up anything else that simply happened to come to his mind at that time, but the essence of the transaction was the sale of himself and not of anything else. This claim, you understand, had no reference to Philip Stock at all. Could there be any motive for him to want to take up that claim? Would there have been any purpose in his taking up a worthless claim against the Citizens Company which had already been paid twice?

Now, gentlemen, the question under the instruction of the Court is not whether there was a Kinloch Syndicate. Do not let that bother your minds; not whether this man lost some money in an alleged transaction—do not trouble yourself about that—the question is not whether this stock had any value—do not bother about that; the question is not whether the claim was even valid—do not bother yourselves about that; the question is, Did the defendant take this nine thousand dollars under an agreement to influence his conduct regarding this bill? Can you doubt that he did that very thing? Leave out all questions that are collateral and do not concern the main question here, leave them out. Can it be explained upon what theory this transaction took place other than the pur-

chase of Meysenburg? Do you doubt that Mr. Stock went there for the purpose of buying Meysenburg? I do not think anyone could doubt that. Do you doubt that the money was put up for the purpose of buying Meysenburg? You cannot doubt that. Do you doubt under the circumstances, in view of the previous conversations he had with other members of the committee, in view of the subsequent conduct, in view of all his actions on the bill, that he sold himself, and that he assumed a hostile attitude so as to make them pay him that money?

Gentlemen, you are to set up the standard of official conduct in St. Louis in this case. What do you want the standard of official conduct in St. Louis to be? Do you want it to be such as this defendant has done? Do you want him to be the type of official life in St. Louis? Do you want other officials to gauge their actions by his, or is your standard higher and better than that? I hope to God it is. If all officials were like this man then God pity our City, God pity the citizens who would be in the hands of such officials.

Gentlemen, eager and anxious eyes are looking to you to vindicate the law and show to the world that in St. Louis juries will punish corrupt officials. A conviction will do more good for St. Louis than anything that could happen in a hundred years; an acquittal would do irreparable harm; a conviction means the end of official corruption in St. Louis, and its death knell. An acquittal means a carnival of corruption. It would be a thousand times better that bribery be undetected than not be punished when detected. The object of punishment is not revenge, but as an example to others as to what they may expect in like cases.

You can, by your verdict, gentlemen, either send the hoodlums a message of encouragement, of cheer and approval, or you can send them a message of stern and terrible condemnation and disapproval.

What shall your message be? What is your standard for official conduct in St. Louis? Shall it be: "A public office

is a public trust?" The result of your deliberations and your verdict will show.

Gentlemen, I ask you in the name of the State and of this great City, I ask you in the name of every law abiding citizen, of every man, woman and child; I ask you in the name of all that is good and holy to vindicate the law and set the stamp of your disapproval on such conduct as you see here, by your verdict, with such force as will put an end to official corruption in St. Louis for years to come. Be true to your State, be true to the law, be true to yourselves; to each of you, I say: "Be true to thyself, and it must follow, as the night the day, that thou canst not then be false to any man," or the community in which you live.

Gentlemen, the case is in your hands.

THE VERDICT AND SENTENCE.

The *Jury* retired and in about an hour returned with the following verdict: "We, the Jury, find the defendant guilty of bribery as charged in the indictment and assess his punishment at imprisonment in the penitentiary for 3 years."¹³

¹³George W. Sanders, of 4393 West Pine boulevard, president of the Sanders Duck & Rubber Co., foreman of the jury that convicted Councilman Emil A. Meysenburg of bribery, was interviewed by the Post-Dispatch Friday morning. "It was a remarkable and surprising verdict in one respect," said Mr. Sanders. "That was that every man on the jury was of the same conclusion, without knowing what the conclusion of the other eleven might be. I myself, after hearing and considering the evidence, formed the opinion that Mr. Meysenburg was guilty. The arguments did not affect my conclusion in the least. I had no idea what the conclusions of the other eleven jurors were, as I had not asked any of them and none of them had volunteered the information. But, on the very first ballot, which was in writing, the entire twelve jurymen wrote 'guilty' on the slip of paper handed them. This consensus of opinion, without discussion, is what, under the circumstances where there was much room for possible variance, is what I meant by saying that the verdict was surprising and remarkable in one respect. But, I want to say, too, that I believe no verdict was ever more honestly and conscientiously given. If I were delegated to select eleven jurymen from the entire city of St. Louis in the interest of right and justice, I do not think I could improve

April 1.

The *Prisoner's Counsel* having made a motion for a new trial, which was overruled, he was today sentenced in accord-

on the eleven gentlemen who sat with me. I did not know any of them personally when I went into the jury box. But their every action impressed me with their profound sense of right and justice. I heard several of them say that they carefully refrained from reading any of the newspaper articles concerning the trial while sitting as jurors. I, myself, had not read a line about the case since the trial started and have not yet read this morning's papers telling of the verdict.

"It is not a pleasant thing to be placed in a position where you are compelled to sentence a man to the penitentiary. Particularly is it not pleasant when you are compelled to sentence a man who has long enjoyed a reputation for integrity and uprightness in the community. But, as far as I was concerned, I felt there was nothing else for me to do in Mr. Meysenburg's case except what I did. I felt sorry for Mr. Meysenburg. I feel sorry for him yet. I felt sorry for a man who had hitherto had a good reputation in the community should allow himself to be placed in a position where such facts could be brought out against him in evidence as were brought out at this trial. I believe that I would have been false to my oath as a juror, false to the state and to the community if I had acted otherwise than as I did, and I believe the other 11 jurymen entertain similar sentiments. When the jury retired from the court room, I was elected foreman of the jury, Mr. Brown, clerk, and Mr. Maxwell, teller. The instructions of the court were read. Then certain paragraphs were read two or three times as some of the jurymen wished to satisfy themselves as to exactly what the court directed. There was no hurry about it, no haste. When the jurors seemed satisfied with the meaning of the instructions, I, as foreman, suggested that an informal ballot be taken. Each man was directed to write on a slip of paper whether he found the defendant guilty or not guilty. Mr. Maxwell collected the ballots and Mr. Brown tallied them as he read them. There was no discussion among the gentlemen as to what they would write. Every man seemed to have made up his mind one way or the other and to have felt capable of writing his decision without assistance. When the reading of the ballots was concluded it was found that twelve individual jurors had voted Mr. Meysenburg guilty. The whole matter had taken only about 15 minutes. There was nothing else to do under the instructions but to determine the length of sentence. The instructions were that, if found guilty, the defendant should be sentenced to not less than two or more than seven years.

"The opinions of the jurors were not unanimous on this matter at first. Two, three, four and seven years were suggested. There was a discussion as to what figure should be agreed upon and it resulted in the sentence being unanimously fixed at three years. I

ance with the verdict of the jury to imprisonment for the term of three years in the Penitentiary of the State and to pay the costs of the prosecution.

am satisfied that the verdict was an honest opinion of our jury developed from a thoughtful consideration of the facts brought out in evidence. The evidence showed a chain of circumstances that convinced me of the guilt of the defendant. Whether the other jurors were likewise impressed by the evidence or by the arguments of the state's attorneys, I can't say. On me, however, the arguments had little effect, I drew my conclusions from the evidence and I think most of the jurors were gentlemen who were able to interpret the evidence for themselves. The case was ably presented, to my mind, though by the attorneys for both sides. The jury appreciates, too, the courtesy of the counsel on both sides and the court. We were allowed to go home the three evenings the trial was in progress and also go out to our meals. I believe that every man on the jury carefully observed the admonitions of the court and not only did not read any newspaper articles in connection with the case, but did not talk about it or in any other way allow himself to be influenced in the discharge of its sworn duty."—*St. Louis Post-Dispatch*, March 28, 1902.

The Supreme Court reversed the conviction on the ground that the indictment was technically insufficient.

State v. Meysenburg, 171 Mo., 1.

THE TRIAL OF JULIUS LEHMAN FOR PERJURY, ST. LOUIS, MISSOURI, 1902.

THE NARRATIVE.

The Municipal Assembly of the city of St. Louis is composed of the House of Delegates and the City Council. Julius Lehman, in 1900-1901, was a member of the House of Delegates, in which body there was a "combine" of 19 members for the purpose of controlling legislation, and obtaining money for their votes. In October, 1900, there was introduced in the Municipal Assembly a bill granting to the St. Louis & Suburban Railway Co. certain privileges and franchises. While the bill was pending, John K. Murrell, a member of the House, and of the combine, of which Lehman was likewise a member, went to Philip Stock, the legislative agent of the Suburban Co., and said to him, "I represent the House of Delegates, and we want \$75,000 from your company, and if you do not give it the bill will not pass, and if you do give it the bill will pass." He further proposed that half of the amount be paid when the bill should pass the House of Delegates, and the other half when it became a law. Stock told him that he would not submit the proposition to his people, because he knew they would not accept it, but that if Murrell would make the proposition that the seventy-five thousand dollars should be paid after the bill had been passed and signed by the Mayor, then he would submit it. Murrell later saw Stock and said that the proposition that \$75,000 should be put up to be turned over after the bill had been passed and signed by the Mayor would be accepted. Stock had reported to Charles H. Turner, the President of the Suburban Company, the result of his conferences with Murrell, representing the House of Delegates, as a result of which Turner arranged with a bank for the money and lock box (No. 132) was rented at the Lincoln Trust Company and a package containing \$75,000 in bills deposited there until the bill became a law.

There were two keys, one was delivered to Murrell and the other to Stock, the agreement being that both must be present when the box should be opened, and that when the bill passed both houses and was signed by the Mayor, it would be delivered to Murrell for the "combine."^a But before the bill passed the House an injunction was issued by the circuit court enjoining the House of Delegates from taking action on it. The House expired by limitation, a new House was elected. The "combine" continued its existence for the purpose of securing the \$75,000 as the members insisted they had done all they could do, and it was not their fault that the bill was not passed. Efforts were made to compromise with Stock for part of the money. He refused to pay any more than the expenses that Murrell had been put to. Lehman and other members were summoned before the grand jury. He denied all knowledge of the deal and though he was informed that he could either tell what he knew or that he might stand the consequences and be indicted on a charge of bribery, he cheerfully maintained that he knew nothing. But both the bribers began to get frightened and Turner and Stock were induced to tell to the grand jury the whole story and Lehman was at once indicted for perjury.

On the trial it was shown that Stock when summoned before the grand jury, had confessed and delivered up his key to the box in the Lincoln Trust Company, and that a committee from the grand jury, together with the Circuit Attorney, visited the Trust Company, and the box 132 was opened and found to contain the \$75,000. It was also proved that Lehman had admitted to a friend that he knew about the combine and the money.^b But the conclusive evidence of his perjury was given by a lawyer named Reiss^c who had been doing some legal business for Lehman, and who swore that on one occasion, after paying Reiss some money he owed him, the prisoner stated to him that he wanted to consult him concerning a mat-

^a Philip Stock, p. 424.

^b John F. Mielert, p. 434.

^c Paul Reiss, p. 435.

ter in which the "boys" of the old House of Delegates were interested. It was a matter a lawyer ought to take hold of, and as Reiss was a member of the House, he was best qualified to take the matter up. Stock had a key to a box in the Lincoln Trust Company which contained \$75,000 that was to have gone to the "boys" if the Suburban bill became a law, and he asked Reiss to see Stock and try and bring about a settlement between Stock and the "boys" concerning the fund. Mr. Reiss refused to undertake such a commission.

Lehman was speedily convicted by the jury. The Supreme Court reversed the conviction for perjury on a technical point whereupon Lehman was indicted, convicted and sent to the penitentiary for being a member of the combine and for soliciting a bribe for his vote as a member of the Municipal Assembly in another corrupt deal. (See *post*, p. 567.)

THE TRIAL.¹

In the St. Louis Circuit Court, Criminal Division, May, 1902.

HON. O'NEILL RYAN,² Judge.

¹ *Bibliography.* *"Record 11561 Supreme Court of Missouri. State of Missouri, Respondent; Julius Lehman, Appellant. Filed November 18, 1902. John R. Green, Clerk."

The St. Louis Republic, The St. Louis Post-Dispatch and The St. Louis Globe-Democrat, May 16, 17 and 18, 1902.

Municipal Corruption; An Interview with Joseph W. Folk, 55 Independent, 2804.

The Reign of Boodle and the Rape of the Ballot in St. Louis (Lee Meriwether), 33 Arena, 43.

Tweed Days in St. Louis (Wetmore and Steffens), 19 McClure, 577.

The Shamelessness of St. Louis (Lincoln Steffens), 20 McClure, 545.

The St. Louis Bribery Disclosures (W. R. Draper), 54 Independent, 2402.

Enemies of the Republic (Lincoln Steffens), 22 McClure, 587.

The Battle Against Bribery, by Claude Wetmore. The Pan-American Press, 623 Locust street, St. Louis, U. S. A.

² RYAN, O'NEILL. Born St. Louis, 1860. Educated in public schools and admitted to St. Louis Bar; Judge Circuit Court, 1900-1906.

Julius Lehman was, on February 1st, indicted by the grand jury for the crime of perjury alleged to have been committed before a grand jury in the City of St. Louis, where being called as a witness, he had denied any knowledge of a combination among the members of the St. Louis House of Delegates to corruptly obtain money for the passage of an ordinance granting certain rights to a Street Railroad Company.*

* The Grand Jurors of the State of Missouri, within and for the body of the city of St. Louis, now here in court, duly impanelled, sworn and charged, upon their oath present, That at the said city of St. Louis on the 31st day of January in the year one thousand nine hundred and two and during the December Term, one thousand nine hundred and one of said court, the grand jury of the State of Missouri, within and for the body of the City of St. Louis were then and there duly and legally convened, having been then and there duly and legally impanelled, sworn upon their oath and charged according to law in Division No. 8 of said court, and that a certain complaint was then and there made and presented before said grand jury against one Charles Kratz, and one John K. Murrell and other persons for the offense of bribery committed by the said John K. Murrell, Charles Kratz and others in said city of St. Louis, and that in the investigation and hearing of said complaint before said grand jury so impanelled and sworn as aforesaid it developed that in October and November in the year one thousand and nine hundred there was pending in the Municipal Assembly of the city of St. Louis, consisting of a City Council and a House of Delegates, an ordinance known as Council bill No. 44 and commonly known as the Suburban Railway bill, same being a measure giving and granting to the St. Louis & Suburban Railway Co., a railroad corporation, certain rights, privileges and franchises; that one John K. Murrell was at said time a member of said House of Delegates and that one Charles Kratz was at said time a member of said City Council, and that one Philip Stock was employed by said St. Louis & Suburban Railway Co., a corporation as aforesaid, to secure the passage of said ordinance by said Municipal Assembly, and that on or about November 30th, 1900, the said John K. Murrell, member of the House of Delegates as aforesaid, went to said Philip Stock and stated that unless a large sum of money, to-wit: Seventy-five thousand dollars should be put up for the use and benefit of said House of Delegates the said ordinance would not be passed by the said House of Delegates; that if said Philip Stock, agent of the said St. Louis & Suburban Railway Co., would place with said John K. Murrell the said sum of seventy-five thousand dollars that said ordinance would pass said House of Delegates, and after some conferences the said Philip Stock and the said John K. Murrell went to the Lincoln Trust Company, a corporation, with offices at No. 700 Chestnut

April 17.

The case was called today.

Joseph W. Folk,⁴ Circuit Attorney; *C. O. Bishop*⁵ and *A. C. Maroney*,⁶ for the State.

Thomas B. Harvey,⁷ *Thomas J. Rowe*,⁸ and *John A. Gernes*, for the Prisoner.

street in what is known as the Lincoln Trust building, and there said Philip Stock in the presence of said John K. Murrell deposited in lock box numbered one hundred and thirty-two, of the safe deposit vaults of the said Lincoln Trust Company, the sum of seventy-five thousand dollars, there being two keys to said box, said Philip Stock holding one key and the said John K. Murrell holding the other key, and that the said sum of money was deposited with the express understanding between said Philip Stock and said John K. Murrell that upon said ordinance being passed by the House of Delegates, the City Council, and signed by the Mayor, the said sum of money would be turned over to the said John K. Murrell for his own use and benefit and for the use and benefit of the other members of the House of Delegates he claimed to represent:

That in said investigation, one Julius Lehman was duly summoned as a witness and did then and there personally appear as a witness before said grand jury in regard to said complaint; that the said Julius Lehman was then and there duly sworn by the foreman of said grand jury and took upon himself his corporal oath, the said foreman, to-wit: one William H. Lee, being then and there duly and legally authorized and empowered and having competent authority to administer the said oath to the said Julius Lehman, and that then and there it became important and was material to the issue and to the investigation of said complaint by the said grand jury whether the said Julius Lehman had any knowledge or information of the existence of said sum of seventy-five thousand dollars and of the purposes for which it was to be applied;

And that then and there he, the said Julius Lehman, on his said corporal oath and before the said grand jury, did feloniously, falsely, corruptly, knowingly, wilfully and maliciously depose and swear in substance and to the effect following: that he did not know of nor had he ever heard of the existence of the said seventy-five thousand dollars deposited in the Lincoln Trust Company as aforesaid for the purpose of influencing, or bribing, or corrupting any member of the House of Delegates for his vote or influence in the passage of said ordinance;

Whereas, in truth and in fact he, the said Julius Lehman, then and there well knew of the existence of the said sum of seventy-five thousand dollars and the said sum of seventy-five thousand was deposited in a box in this safe deposit vault of said Lincoln Trust Company as a bribe to be paid to the said John K. Murrell and

The *Prisoner's Counsel* moved to quash the indictment on the following grounds:

(1) Its allegations are insufficient in law to charge any offense; there is no allegation of jurisdiction of the grand jury over the alleged offense or inquiry, nor of the appointment of the foreman of the grand jury, nor that the perjury was before any court, public body, etc., named in the statute.

(2) The allegations are inconsistent, repugnant, indefinite and uncertain.

(3) It is not sufficiently alleged what offense was being investigated by the grand jury and against whom said offense was charged; but the allegation is general and to the effect that the offense of bribery was charged against one Charles Kratz and one John K. Murrell and other persons.

(4) There is no allegation of the materiality of the testimony of the said Julius Lehman to any particular issue or with reference to the inquiry of bribery of any certain individual.

(5) The indictment does not show how any knowledge or information of the defendant with reference to "the existence" of said sum \$75,000, "and of the purposes for which it was to be applied" was material to the inquiry alleged to have been before the grand jury; or how any such knowledge or information would have tended to establish the guilt or innocence of any particular person; nor is it shown how defendant's aforesaid knowledge or information would have been material, for the reason that, as appears by the allegations of the indictment, it had already, before

other members of the House of Delegates whom he claimed to represent, to influence their votes for and in favor of the passage and enactment of the said ordinance in the said House of Delegates;

And so the grand jurors aforesaid upon their oath aforesaid do say, that the said Julius Lehman at the city of St. Louis aforesaid on the thirty-first day of January aforesaid in the year aforesaid in the manner and form aforesaid, feloniously, falsely, knowingly, willfully and corruptly committed willful and corrupt perjury, contrary to the form of the statute and against the peace and dignity of the State.

⁴ See *ante*, p. 341.

⁵ See *ante*, p. 342.

⁶ See *ante*, p. 341.

⁷ HARVEY, THOMAS BROOKS. Born 1853, Oktibetha County, Miss. Educated University of Mississippi. Studied law Columbia, Miss., and admitted to the bar; removed to St. Louis, Mo., 1880, and began practice there, making a specialty of criminal law. Circuit Attorney, 1893-1894. Judge Criminal Court, 1895-1897.

⁸ ROWE, THOMAS JOSEPH. Born St. Louis, 1851. Graduated Christian Brothers College and Washington University Law School. Admitted to Bar, 1872, and practiced law in St. Louis since. Member Board of Freeholders, 1914.

the testimony of this defendant, been established that the sum of \$75,000 had been deposited in a certain receptacle, and by whom and for whom and for what purpose it had been so deposited.

(6) The indictment does not allege any specific knowledge, or the character or source of said knowledge of the defendant, with reference to said \$75,000, nor does it allege how, when or from whom he heard of said sum of money and the purpose for which it was to be used; thus leaving the charge that he did have such knowledge and that he had so heard of said money too indefinite, vague and uncertain for this defendant to be able to prepare his defense.

(7) The alleged knowledge of the defendant, or what the defendant may have heard about said money, is too indefinite and uncertain and might or might not be competent testimony; and the allegation of the indictment should show that the testimony sought to be elicited was legally competent for the purpose of establishing some fact material to the inquiry with reference to the guilt of some particular person.

April 28.

The motion to quash the indictment is overruled by the COURT.

May 15.

The *prisoner* being arraigned pleads not *guilty*.

On application of the State a special jury is summoned and the following special jurors are sworn to try the case:

Harry C. Oyler, Foreman; Christian C. Bickemeier, Jr., Mortimer Newhouse, Frank E. Neulsen, Henry S. Platt, Jr., Henry A. Rehbein, James W. Anderson, Edgar Skinner, Charles H. Smith, Louis Stockho, George W. Teasdale, and Otto W. Witte.

Mr. Folk made the opening statement of what the prosecution expected to prove. He told of the agreement existing between Stock and Murrell to pass the Suburban bill. Murrell had communicated the bribery scheme to Lehman and the members of the "combine" and they knew of the money in the safe deposit box, yet when Lehman was called before the Grand Jury to testify in connection with it he denied knowing anything about the case. When Paul Reiss was elected to the House of Delegates, Lehman went to him and told him all about the money in the safe deposit box and requested his assistance in forcing Stock to release his key so

that the money could be divided. Reiss refused to have anything to do with the affair and is now among the witnesses for the State.

THE WITNESSES FOR THE STATE.

Edwin E. Goebel. Am a Deputy Clerk of the St. Louis Circuit Court. The minutes of the meeting of the Circuit Judges in December, 1901, general term, show an order for a December grand jury in Division No. 8 of the Circuit Court.

J. A. Dorr. Am Deputy Clerk of Division No. 8. The records show that a grand jury was impanelled according to the order of which William H. Lee was foreman; the other members being Bruce C. Alvord, Samuel H. Bowman, James W. Breckenridge, John P. Camp, John M. Dutro, John H. Gundlach, Casper Harlenbach, Philip J. Heuer, Richard W. Shapleigh, Huntington Smith and Marcus A. Bernheimer.

George F. Mockler. Am Secretary of the City Council. The Suburban bill was introduced in the City Council by Charles Kratz on October 12, 1900. It was referred to the Committee on Railroads at the following meeting and remained in the committee until January 25, when it was reported to the Council. On February 5 it was passed and ordered to engrossment. There were at least twenty-five meetings of the Council at which no action was taken on the bill. On February 5th it was sent to the House of Delegates. J. K. Murrell was a member of the House of Delegates; so was the prisoner, Lehman.

Joseph N. Judge. Am Clerk of the St. Louis House of Delegates. Have charge of its journal which shows that the Suburban bill was received from the Council on February 8th and was read a last time on that date. On February 13th it was referred to the Committee on Railroads.

Philip Stock. Am Secretary of the St. Louis Brewing Association. Remember when the bill known as Council bill 44, an ordinance to grant the St. Louis & Suburban Railway Co. certain privileges and franchises, was before the Municipal Assembly in 1900; was requested by Mr. Turner, the president, to look after the bill and see it was passed. Mr. Murrell came to my office October 17, 1900. Stated he was representing the House of Delegates and wanted to know whether I was representing the Suburban Railway, I told him I was; he then said, "What are you proposing to do respecting the passage of this bill?" I said I had no proposition to make, but would like to hear from him, he said it would require \$75,000 to pass the bill, that he wanted half of that amount paid after the House had passed the bill and the other half whenever the bill had become a law. I told him I would not submit his proposition to my people because I knew they would not accept it, but if he would make the proposition that the \$75,000 should be

paid after the bill had been passed and signed by the Mayor then I would submit it to my people; he then left. The next time he came to me was on October 22nd; he stated he would not recede from his first proposition because he was not sure that if a veto should take place the Council would pass the bill over the veto; I said all right, I could not do anything in this matter; he said "It is all off," I said, "I suppose it is," and he got up and handed me his card with telephone numbers and said if I wanted to see him I should telephone him.

Did not see him again for a long time, until November 19th, when he came to me and said he would accept the proposition that the \$75,000 should be turned over to him after the bill had been signed by the Mayor and had become a law. Told him I would telephone him, I had to make my money arrangement with my people first and I would telephone him when I was ready. November 23rd I telephoned it was all right and I would meet him the next day at the German Savings Institution at 10 o'clock in the morning, get the money and deposit it. He came there the next morning and I got the money, wrapped up, from Mr. Hospes, the cashier; told Mr. Murrell I would go with him to the Mississippi Valley Trust Company to deposit the money jointly and he objected to it, he said, "I have a friend at the Lincoln Trust Company and I would like to have you deposit the money there;" I said I had no objection whatever; we went to the Lincoln Trust Company, signed our names, rented a box,

I turned the package over to him, which I had not opened at all, he opened the package, counted the money and found it to be \$75,000 and he put it in the box and it was locked up.

This is one of the keys to the box which I kept; the one I handed to the grand jury; the other key Mr. Murrell had. This key has a card on it of the Lincoln Trust Company and the word "carriage" written in red ink; the officer there required as an identification we should select a name when we came there, I selected the name "carriage" because Mr. Murrell was in the carriage business; it is a password; Did not see Murrell again for a long time; until after the Assembly had been enjoined from passing the ordinance. He telephoned me to call upon him and I went up to his office, he was there with some friend of his, I don't know who he was, and he asked me in the presence of the friend what I proposed to do, whether I was going to give up the money or not. I said I would not, that I would pay all legitimate expenses even if they amounted to \$3,000 I would pay them and outside of that I would not pay a cent; he said he wanted the money and I left in disgust; I did not see him until January, 1902, when I received a telephone message from him wishing me to meet him, I answered him through the telephone that if he had anything to say to me to put it in writing; I didn't hear from him any more until the second day of February when he hunted me up and found me in the restaurant on Third street, Melzheimer's; he told me there would be a meet-

ing held and he was willing to compromise the matter for half and he would have to report to that meeting on the next Monday; told him I would not do anything in the matter at all, that what I stated to him before I would carry out, viz., paying all the expenses that he had and he then stated, "Well, the grand jury will take hold of it;" then we parted and I have not seen him since.

Mr. Folk. I show you this package (132 Lincoln Trust Co.) and will ask you to open it and see if you can identify that as the package put in the box by you (handing same to witness)? It was not put in by me, it was put in by Mr. Murrell. I suppose it is the money, I never counted it or saw it except when he saw it. Will you count it rapidly and see if there is \$75,000? Yes, sir, \$75,000. \$75,000 in that package now? Yes, sir. You can identify that as the same package of money you put in the box with John K. Murrell? Yes, sir. Take package No. 1; two one thousand dollar bills; 100 one hundred dollar bills. Package No. 2, one package of \$1,000, twenty fifty dollar bills; No. 3 is the same. Twenty 50's? Yes, sir. No. 4 is the same, twenty 50's; here is package No. 5 containing eighty five hundred dollar bills, \$40,000. That is package No. 5? Yes, sir. No. 6, there are 100 one hundreds. \$10,000. No. 7, that is the same, \$10,000. 100 one hundreds? Yes, sir. Making an aggregate of \$75,000. I will ask you if from the time that money was deposited in box 132 in the Lincoln Trust Company in the joint names of yourself and John K.

Murrell, whether you have seen that money since then until today? I have never seen it.

I stated before in my testimony that the agreement was that the money should be turned over to Mr. Murrell if the bill had been signed by the Mayor and become a law. It was not paid over to him because the bill had not been passed. The matter was pending in the Supreme Court by writ of injunction preventing the House of Delegates acting on the matter.

May 16.

Cross-examined. When I stated yesterday that it would be necessary for me to see my people in reply to Mr. Murrell's suggestion that he would accept the proposition of \$75,000, I never saw anybody except Mr. Turner. I meant by that expression that I had to see Mr. Turner although I did not mention his name; no name was mentioned by me as to whom I represented, or at whose suggestion it was I were undertaking to handle the matter for the passage of the bill. At none of these times that I have referred was I even acquainted with Julius Lehman, the defendant; did not even see him; he was not present at any of the conversations nor was he present when the money was put in the box; nor did he, so far as I know, have anything to do with it; never saw Mr. Lehman in my life.

Edward F. Hall. Am manager of a safe company, but was in 1900-1901 manager of the Lincoln Trust Safety Deposit Department; the card shown me was written out by me; it reads, "number 132, name John K. Murrell; address 1322 Market

street; password carriage; age 43; height 5 ft. 9¼ inches; figure medium; weight 198 pounds; eyes gray; nose aquiline; hair dark brown; face long; voice medium; complexion fair; married; mother's maiden name Mary Ricker; place of birth St. Louis; remarks, mustache." The purpose of the card was to identify the party who rented the box; the meaning of that word "password" is there are three questions asked the renter for his identification before we look over the description and the first one is his password; the renter takes a word himself that he remembers can be used in case it is asked for; the renter selects his own password and it is written on the identification card.

The other card shown me was also written by me. It read, "Safe No. 132; name Philip Stock; address Wainwright building, room 702; password carriage; age 56; height 5 feet 7 inches; figure medium; weight 173 pounds; eyes gray; nose prominent; hair blond; face round; complexion fair; married; voice deep; mother's maiden name Mary; place of birth Germany; marks mustache." I gave a key to Mr. Stock and Mr. Murrell. The box could not be opened unless both keys were brought.

Cross-examined. Do not think I have ever seen Mr. Lehman, the prisoner; never saw him at the Trust Co. building.

Richard Hospes. Am cashier of the German Savings Institution in this city; have been with it over forty years; know Philip Stock and Chas. H. Turner; in October or November, 1900, Mr. Turner applied for a loan and

offered his name with Ellis Wainwright and Henry Nicolaus; we agreed to give it to him and Mr. Turner's instructions were to hand the money to Mr. Stock; I obtained the money from the teller and handed it to him, and he gave me a note which was signed by himself, Ellis Wainwright and Henry Nicolaus.

Cross-examined. This transaction was between me as representing the bank and Mr. Turner as an individual. Mr. Turner made the note in the office and Mr. Wainwright and Mr. Nicolaus came in and signed it subsequently. The money was turned over to Mr. Stock according to the instructions of Mr. Turner; do not know Mr. Lehman; he was not present at any of these transactions; neither gentlemen stated what the money was for; Mr. Turner paid the interest on the note; it is still unpaid.

Charles H. Turner. Am a banker and president of the St. Louis Suburban Railway Co. The directors of the Suburban Railway Co. in October, 1900, were James Green, Samuel M. Kennard, Henry Nicolaus, Ellis Wainwright, T. N. Jenkins, James P. Dawson and Marquard Foster. Council bill 44, proposing to give the Suburban Railway certain privileges and franchises, was before the Municipal Assembly; it was introduced in September or the latter part of August; Mr. Stock's connection with that bill was that he represented me in looking after the legislative end of it; I requested him to look after it; I went to the German Savings Institution, saw Mr. Hospes and made the

arrangement for the money, \$145,000, for the Suburban Railroad; the money was to be turned over to Mr. Stock; Mr. Stock came to me and told me he would require the money for the purpose of bearing the expense in connection with the passage of this bill; the \$145,000 was arranged for at different times.

Cross-examined. Was a large stockholder in the Suburban Railway. The proposed bill was to enable the Suburban Railway Co. or authorize it, to lay tracks over a great many streets in the city of St. Louis, and also run its cars over portions of the tracks of the St. Louis Transit Co.; had not been authorized by the directors to make this deal with Mr. Stock, or to use money to pass the bill. It was an individual act; do not think any of the directors were aware of it; when Mr. Nicolaus and Mr. Nicolaus and Mr. Wainwright signed the two notes making up the \$75,000 secured for the House of Delegates they were made aware of the fact that I was getting the money from the German Savings Institution for the Suburban Railway Co., but not as to what use I was going to put any of it; they didn't ask any question about the use to which it was to be put, for they signed a great many notes that way; I intended Stock to use the \$75,000 in that connection; for the purpose of bribing the House of Delegates; he told me he would need the money for the purpose of expenses in connection with the passage of the bill, as to the details I knew nothing; to facilitate, as you call it, the passage of the bill.

The Court. Didn't he make known to you that it would be necessary to use money to secure votes for the passage of the bill? I took it for granted. He made known to you what Mr. Murrell said to him that there would have to be \$75,000 put up for the House of Delegates to vote for the passage of the bill? He mentioned no name. He did tell you that some one representing the House of Delegates said that \$75,000 would have to be put up to secure votes enough to pass the bill? He furthermore told me they would kill the bill at the next meeting if \$75,000 was not put up.

George P. Potee. Was present when the grand jurors called at the Lincoln Trust Company together with myself and box 132 was opened the money counted; I counted the money; it was \$75,000. The package of money produced here in court, now on the table, is the same package of money I counted at that time. The box was not opened from that time until yesterday when I was required to bring it into court.

William H. Lee. Am president of the Merchants-Laclede National Bank; was foreman of the grand jury of December, 1901, that had under investigation charges of bribery in connection with the Suburban Railway charter; prisoner Lehman was a witness before us; he was sworn by me; he was asked if he knew or had heard anything in reference to these bribery cases at any time; his answer was he had never heard of it, knew nothing of it until he had seen it in the papers; within a week I think he said, I don't remem-

ber, but very shortly prior to the examination, perhaps two weeks; he was then asked if he knew anything about the \$75,000, ever heard of it, he said he never had; he was asked if he had any conversation with Mr. Reiss, he said absolutely not; about this money or anything in connection with the affair with Mr. Murrell. At the time Mr. Lehman's testimony was taken we were inquiring into official corruption on one hand and by corporations, by bribe givers, on the other; particularly the Suburban bribery matter and the Murrell case, both in the House and in the Council; having reference to the fund that was supposed to have been put up for the purpose of bribery in the Lincoln Trust and Mississippi Valley Trust Company—in the Lincoln Trust \$75,000 and I think \$60,000 in the other; those matters were under investigation at the time Mr. Lehman was examined and it was on his testimony that the subsequent indictments were found; think he was before us but once.

Cross-examined. When we started our investigation we found indictments just as we thought we were justified in doing it, but without reference to the conclusion of any case, so we didn't complete one case before we took up the other and we continued the investigation for the whole corruption as we got along, as it developed. It had developed before us, before Lehman was examined, to the satisfaction of the grand jury, that Murrell and Kratz were guilty of bribery and indictments were voted. The testimony of Lehman did not influence the grand

jury on the charge against Murrell, which we had already voted on.

Mr. Folk. I will ask you whether or not after you had heard the evidence regarding the charges and an indictment had been voted against Murrell the investigation was continued to secure further evidence in the Murrell matter as well as against others? It was. State whether or not at the time the grand jury adjourned the investigation regarding the \$75,000 had been fully completed? It had not.

John M. Dutro. Am a dealer in railroad supplies; was a member of the December, 1901, grand jury when the prisoner testified before it; we were investigating charges against Kratz and Murrell that a certain amount of money, \$75,000 and \$60,000 respectively, had been deposited in two trust companies, the Lincoln Trust and Mississippi Valley in connection with the Suburban Railway bill. The charge connected Murrell with the \$75,000 was in the Lincoln Trust, with the \$60,000 in the Mississippi Valley.

At the time Lehman was brought in to testify the investigation of these particular charges had not been completed. We heard evidence and found indictments, sometimes we would recall witnesses on account of some new phases and we would have the same witness back two or three times after an indictment was found.

At the time Mr. Lehman was brought before the grand jury the investigation of the charges against Kratz and Murrell had not been completed.

An investigation would lead to another name we had not heard or seen and then some name we would want to look at again. I remember we recalled witnesses after we thought we were through with them when new phases would come up, and we had some witnesses back time and time again.

The defendant's evidence before the grand jury was that he knew nothing about the \$75,000 or about the Suburban bill as being connected with that \$75,000.

Cross-examined. After Kratz and Murrell were indicted for the deposit of certain money for their use and benefit in two trust companies the grand jury proceeded to try to see if they could find anybody else in the Municipal Assembly connected with those two deposits or possibly connected with the bribery. It was in connection with that that Mr. Lehman was called as a member of the Municipal Assembly to be interrogated. The indictment against Kratz, according to my best recollection, had been found several days before Mr. Lehman was before the grand

jury as a witness is my recollection. The testimony of Mr. Lehman was not in reference to finding an indictment against Murrell, that having been already found. During the investigation we noted carefully what every subsequent witness would say after the indictments were found to see if anything stronger was found, and we needed Mr. Lehman's testimony to that extent.

Mr. Folk. State, if you know, whether or not after the issuance of the bench warrant against Kratz and Murrell the grand jury ceased to investigate in relation to the two men, or whether they continued to investigate in reference to the two men? A. Yes, sir, we did, we tried to get information at every session, additional information, notwithstanding indictments had been found.

H. A. Buck. Was the official stenographer of the grand jury before whom the prisoner testified. The notes which I made at the time of his evidence are as follows:

What is your name? Julius Lehman.

Where do you live? 3817 North 23rd.

What is your occupation? Fire insurance business.

Are you a member of the House of Delegates at present? No, sir.

Were you a member of the House of Delegates in 1900? I was a member for sixteen years.

Were you a member of the House of Delegates at the time the Suburban bill came up? Yes, sir.

I will ask you, Mr. Lehman, to tell us all you know about the \$75,000 being in the Lincoln Trust vault, Philip Stock holding one key? I only know what I saw in the paper, I don't know Philip Stock.

You state positively you never heard the fact that there was \$75,000 or any other sum of money put up by Philip Stock or any other person? I have never heard of it.

(Continuing) In the Lincoln Trust Company or any other bank to pay to any member or members of the House of Delegates for the passage of this bill? I never heard of it, I only saw it in the *Star-Sayings*.

That was two weeks ago? About that.

I will ask you further if you did not, prior to that some four or five months ago, go to Mr. Paul Reiss and try to get him to go and see Philip Stock, get his key and have the money turned over to some member of the House of Delegates? No, we talked about some other business, Mr. Reiss had a case for me for some insurance but never not to my knowledge.

You deny ever having stated to him in any way trying to induce him to go and see Philip Stock to get the key and make a settlement? I deny it absolutely.

Richard W. Shapleigh. Am Vice President of the Norvell-Shapleigh Hardware Co. in this city; was a member of the December, 1901, grand jury; was present in the grand jury room at the time Julius Lehman came in to testify; we had under investigation the charges of boodling in the Municipal Assembly, against Mr. Kratz and Mr. Murrell, the charge of having deposited a sum of money, \$75,000, in the Lincoln Trust Company's vaults, for the purpose of influencing legislation in the House of Delegates.

Went to the Lincoln Trust Company with Mr. Dutro, Mr. Camp and Mr. Folk and was present when box 132 was opened; the money was counted in our presence; \$75,000; the box was opened with the key left with the grand jury by Philip Stock.

Cross-examined. Lehman was before us the day before the grand jury made its final report. Recollect that several days before that the grand jury had voted indictments against Charles Kratz and J. K. Murrell, and after doing that they proceeded to investigate further

to see if they could find anybody else connected with the Municipal Assembly who participated in the alleged bribery deal. Remember his testimony; it was a complete denial of every knowledge or connection with this matter.

Charles W. Holtcamp. Am a lawyer and was a member of the House of Delegates in 1900 and 1901 when the Suburban bill was before it.

Mr. Folk. State what knowledge you have regarding the existence of a combine in the House of Delegates for the purpose of controlling legislation in general and legislation in regard to the Suburban Railway bill in particular.

Defendant's counsel object.

The COURT. The witness may state if he knows of any combination in reference to the Suburban bill.

Mr. Holtcamp. A combination existed there of nineteen members, who as a rule, voted together on all matters that came up, and they had their meetings, and a number of us who were not in that combination were barred from their meetings, and when the Suburban bill came up

why it was like any other bill. There was nothing said to me particularly about the Suburban bill, but the matter was talked over in the chamber there—

Defendant's counsel object.

The COURT. You may state if there was any talk in Mr. Lehman's presence or in which he participated.

Mr. Holtcamp. I can't recollect whether Mr. Lehman was there or not.

Mr. Folk. Where did the combination hold its meetings? I do not know beyond the meetings they used to hold in the room adjoining the House of Delegates' chamber, just prior to the assembling of the body. What room is that? It is a sort of retiring room, it is a fairly large room with large easy leather covered furniture, and we used to go in there and lounge around there during the meetings or before the meetings; it is a retiring room. State whether the defendant was a member of that combine?

Defendant's counsel object to the question as immaterial whether he was or not, there being nothing improper in such combine; that it has not been shown that any such combine was organized for any unlawful purpose, but as he has indicated he knows, as we all know, that combinations are made in every body, whether political, religious or semi-religious; that they have their caucuses and work together, and unless something is shown that it was for an unlawful purpose in respect to the bill, it is immaterial.

The COURT. Unless the State undertakes to connect it in that way it is incompetent.

Mr. Folk. Who composed the combine?

Defendant's counsel object.

The COURT. I do not think the connection of this defendant can be shown at this time. There may be a stage in the case when it may be, but until the evidence has been supplied, until this stage has been reached, I do not think the testimony is material.

Mr. Folk. This is introduced on the same theory that we introduced the evidence that the defendant was a member of the House of Delegates, and being a member of the House of Delegates he would be more apt to know regarding the \$75,000 in the box and the key held by Murrell.

The COURT. There must be something more shown to the jury about the combine, how it worked, before the connection of the defendant can be shown.

Mr. Folk. Can you tell us how the combine operated or worked? Only as far as voting on measures was concerned. I was not a member of the combine, could not attend any meetings and never did, did not know anything about them except in the way they would vote. Was it formed along political lines? No; regardless of political lines. How would they operate, would they vote together or not on different measures coming up? Well, with very few exceptions always voted together, with very few exceptions. You say they held their meetings in the room adjoining the House of Delegates' chamber? They would meet there and we would have to wait until they got through their meetings before the House would convene.

Would they allow anybody outside of the combine to come in? They never would allow me in. Did they have anyone stationed there? Yes, sir, the sergeant at arms or one of the members; I went in once or twice and was treated pleasantly, but all business matters were dropped. You were invited to leave? I got out. I knew I was not wanted. How long did you have to wait for them before they would come out into the House of Delegates' chamber where business was transacted? That differed; we have met there and waited one time, I don't remember the exact occasion. I remember we waited almost an hour and a half or two hours.

While this combine was in the room? Yes, sir. Whom do you mean by "we"? The rest of us, who were not parties to the combine. How many of you were not members of the combine? Eight of us, nine of us until Mr. Lopez died and then there were eight. The nine you refer to were members of the House of Delegates? Yes, sir. The nineteen were also members of the House of Delegates? I should correct that, there were only seven of us, because Mr. King died; he was in the combine before it was reorganized; some of the members out of it went into it when Mr. King died and that left seven of us not in the combine. Do you know whether they discussed legislative business in the caucus of the combine? I don't know what they discussed.

Mr. Folk. Did you hear the defendant say anything? Mr. Lehman's seat was right next to mine and very often he would

come in and say: "That bill is going through;" "That bill is not going through," that would be about it. "We will pass such and such a bill to-night." After coming from the caucus of the members of the combine? Yes, sir; sometimes, and sometimes when he came in the chamber from the outside. Some of them generally told us what legislation would pass. Would they meet before the House did and keep the rest waiting? Yes, sir; I never saw them retire. If they did it, it was when I was not in the meeting.

Was Lehman a member of that combine? Yes, sir. Was John K. Murrell a member of that combine? Yes, sir.

Who was the speaker of the House at the time this Suburban bill was up? E. E. Murrell, a brother of John K. Murrell.

Cross-examined. Do not say that the combine was in existence for any unlawful purpose; never was a member of any House except that one, and that was organized regardless of political lines. Have no recollection of the first reading of the bill. The recollection I really have about the bill was the day the Chamber was locked when we were to have a meeting to prevent the service of some legal papers, that is the only recollection I have of the Suburban bill, so far as the House is concerned. I read it when it was in the Council. Do not know of any action taken by the body on it whatever?

W. L. Sturdevant. Am a practicing attorney in this city and was a member of the House of Delegates in 1899 to 1901. During those two years was present at most of the meetings of the

House of Delegates. During the regular session it would meet sometimes twice a week, Tuesday and Friday evenings and sometimes once a week. There was an association of the members of the House of Delegates, associated together to prevent or pass legislation during the time or before the Suburban was before the House of Delegates. There were nineteen in the combine most of the time, perhaps eighteen part of the time. Never saw any of the members that were outside of the combine in the meetings that I remember of; was not a member of the combine; never attended any sessions of what was sometimes called the majority, sometimes called the combine; remember a few instances in which the door was closed and the sergeant-at-arms was there.

Julius Lehman and John K. Murrell were members of that combine. They were understood to be members of it; of course I never saw any compact or anything of that kind; don't know what arrangements they had among themselves. What I know is what I saw; saw them together and they usually voted together and seemed to caucus, the solid nineteen, as they were called. Have seen Lehman and Murrell coming from the meetings where the combine was;

Lehman and Murrell usually acted and voted with the combine.

Cross-examined. Have voted on some propositions in the same manner as Mr. Lehman has; have never been in the caucuses of the combine.

Fred G. Zachritz. Am a hammer-smith; was a member of the House of Delegates of St. Louis in 1899 and 1900, did not belong to a combine of the House of Delegates and did not know of any; Lehman and J. K. Murrell were together a good deal but he was no more with him than with Bersch and Helms, two other members.

John F. Mielert. Am a Deputy Clerk; was formerly in the Sheriff's office. Have known prisoner about ten years. About 1st February, 1902, met Mr. Lehman on a car shortly after he (Lehman) was indicted; there was nothing mentioned about any amount of money; he was on the car, I guess, five or ten minutes, and he was indignant about his indictment. Regarding what he said about the deposit in the Lincoln Trust Company, I could not give you his language, because it was a casual conversation, the gist of it was he had heard about these matters, that it was hearsay; he didn't say he knew anything himself.

Mr. Folk offered in evidence the injunction proceedings in the Circuit Court of the City of St. Louis in the case of James M. Carpenter and others v. Edmund Bersch and others, members of the House of Delegates whereby the House of Delegates was enjoined from passing the Suburban bill.

Defendant's counsel object.

The COURT. If you want the petition introduced, I think you are entitled to have it done as the basis of the proceeding.

Mr. Folk read the petition and the injunction.

Paul Reiss. Am a practicing attorney in this city and a member of the House of Delegates. Mr. Lehman, as I remember, called at my office in the Wainwright Building sometime the latter part of April or early part of May, 1901, at my request; had been acting for him as attorney in connection with certain insurance cases and he was indebted to me in the sum of \$600 for attorney's fees; asked him to call with respect to that fee and he did, after talking of the matter of the fee Mr. Lehman began to joke with me concerning my election to the House of Delegates, and in the course of the conversation said "By the way, I want to consult you concerning a matter which interests the boys of the old House. It is a matter a lawyer ought to take hold of and now you are a member of the House, you are best qualified to take up this matter." He asked me if I knew one Philip Stock; told him I didn't, Mr. Lehman said, "You must know him, he is a prominent brewer with offices in the Lincoln Trust Building;" I told him I did not know Philip Stock, a brewer, but I did know one Philip Stock; he said that must be the man; he said Stock had a key to the box in the Lincoln Trust Company which he said contained \$75,000, and this was to go to the boys when the Suburban bill had become a law and asked me whether or not I would see Stock and try and bring about a settlement between Stock and the boys concerning the fund; I told him I could not act in the matter and further I thought he must be mistaken, at least in the party Stock, that I

knew the gentleman and did not believe he would be connected with any matter of this kind; think that was the sum and substance of my conversation with Mr. Lehman; don't know that he said anything further than somebody would call and see me in connection with the matter, something of that sort. One of the members of the House of Delegates whom he did not name had one key he said and Mr. Stock had the other key. He said the bill had not been passed because of the injunction but that the boys were always ready to carry out their part of the contract, and therefore they ought to be compensated. He thought they were entitled to a part of the money. He asked me whether I would undertake the matter of arranging the differences between Stock and the boys. I said I would not for several reasons, and the talk came to an end about in that way on my refusing to take any part in the matter.

Cross-examined. Remember my bill was paid sometime in May, but I had several talks with Mr. Lehman concerning the bill. At first he saw fit not to question the amount and later on asked for a reduction, which I agreed to. Whether the reduction was agreed on on this occasion is something my memory is not clear on. He was in my office after that. I attended to a little matter for him after that.

Will not positively say that Mr. Lehman connected himself with the money because I am not certain of it. Am not positive whether Mr. Lehman connected himself as an individual with the fund; will only state that he did

say the boys were interested. And that they were entitled to their compensation.

If I remember rightly, it was in the forenoon, nearer twelve than eight because I am not at my office before nine generally. Could not say I called him up

that day or he responded in answer to a telephone message and could not fix the time of day he was there, think in the forenoon, although I am not sure on that point. Can't give the day of the week, except it was not Sunday.

Mr. Harvey moves to strike out the testimony of the witness on the ground that it developed, on cross-examination, that the facts were learned, according to his own testimony, under circumstances that made the communication privileged.

The COURT overrules the motion.

Mr. Folk offers in evidence engrossed Council Bill No. 44, being an ordinance to grant to the St. Louis & Suburban Railway Co. certain privileges and franchises, being the same bill identified by the witness Mockler.

Mr. Rowe demurs to the evidence produced by the State and asks that the jury be instructed to acquit on the following grounds: (1) Because the evidence is insufficient to sustain a verdict of guilty.

(2) Because the testimony of the witness Paul Reiss is not sufficiently corroborated.

(3) Because the testimony of said Reiss is with reference to privileged communications between attorney and client and therefore incompetent.

(4) The testimony of defendant before the grand jury was subsequent to the finding of indictments against Charles Kratz and J. K. Murrell and therefore not material to or bearing upon the grand jury's action upon the charges against them.

(5) The evidence shows a material variance, the indictment alleging Phil. Stock to have been the agent of the St. Louis & Suburban Railway Co. and the testimony showing that he was acting for Chas. H. Turner personally.

(6) The evidence does not show that it appeared to the Grand Jury or that evidence was given before it showing the placing of the money in the Trust Company's box by Stock and Murrell jointly, etc., for the purposes alleged, nor does it appear that facts appeared before the Grand Jury making the testimony of defendant material to the inquiry before them.

May 17.

The COURT overrules the demurrer to the State's evidence.

THE WITNESSES FOR THE PRISONER.

Farwell Walton, Charles Schweickhardt, John H. Pohlman, Anton H. Luker, Fred Busche, Edward D. Chamberlain, Herman Schuls, F. W. Woerheide and Edward W. Spreck testified

to the prisoner's good reputation for truth, and veracity and his good character.

Fred G. Gadsdorf. Am an employe of a bottling company; have worked for the prisoner

doing jobs for him; helped him to settle his case when his factory was burned down. Mr. Reiss was his attorney in the insurance case; there was a difference between Mr. Lehman and Mr. Reiss in regard to the amount due Reiss by Lehman for services as attorney. Went to the office of Reiss when this account between them was finally adjusted and settled. Mr. Reiss had telephoned Mr. Lehman he wanted to see him in regard to a settlement of the insurance and Mr. Lehman said, "You better come up town with me, we have some other matters to adjust;" I went with him and we both went to Mr. Reiss' office; Mr. Reiss insisted on \$600 for his services, Mr. Lehman said, "My God man, you want all that is coming to me;" there was only at that time \$3,750 involved and the settlement was made at 76 per cent, and him asking \$600 would mean pretty near one-quarter of what was due him. Mr. Lehman offered Mr. Reiss \$400 for a settlement, which he accepted, and right there Mr. Lehman wrote him a check for \$400; nothing occurred between them in the way of conversation that I did not hear. Nothing was said by Lehman in regard to \$75,000 being in the Lincoln Trust Co. or anywhere else, and in regard to Philip Stock in connection with that money being desired by the boys.

To Mr. Folk. Don't know I went every time that Lehman went to Reiss' office; went three or four times. Cannot say the exact day Lehman gave Mr. Reiss the check. Lehman has not said a word to me about my

testimony; did not know why I was subpoenaed here; no one else spoke to me about it; did not see Lehman after I was subpoenaed until I got to the court room. Haven't talked to a soul about this case.

Julius Lehman. Am the defendant on trial here; am 53 years old; born in Germany but have lived in St. Louis 35 years; a small factory I own was burned and I employed Mr. Reiss to collect the insurance. We had a dispute about his fee and one morning he asked me by telephone to come to his office. Mr. Gadsdorf and I went there and after some talk we agreed on \$400, for which I gave him my check. Heard him say after I settled the matter, we had a conversation about certain money deposited in the name of Philip Stock and a member of the House of Delegates and that the boys, referring to the members of the House of Delegates, ought to be compensated. No such conversation as that was had. Mr. Gadsdorf and I left there together; don't think the whole controversy took ten minutes. Did not at any other time or any other place ever have any conversation of that character with him. Before I read about this matter in the papers last January, I believe it was, had never heard about \$75,000 or any other sum of money, being deposited by Philip Stock, he keeping a key and some member of the House of Delegates keeping a key to the box; the first I saw or heard of it was in the *Star-Sayings*.

Cross-examined. Went to Mr. Reiss' office half a dozen times. Did not have Mr. Gadsdorf with

me every time. Knew John K. Murrell. He was a member of the House of Delegates with me at two different times.

Don't know anything about a combine. Do not know what a combine is. A man blacked my shoes this morning and said he had some combination shoe blacking.

Know Captain Holtcamp; sat next to him in the House of Delegates. Never told him after going to a combine meeting, "Well, we are going to pass such and such a bill." Holtcamp told a falsehood when he said it. I deny I said a certain bill would pass, I never spoke that much to him. Know Mr. Mielert; did not say to him that I had heard the matter of the \$75,000; I didn't. Told Mr. Mielert on the street car how I came to be indicted.

Mr. Folk. Don't you know that this deposit of \$75,000 was a matter of common talk away back yonder in April and May of last year in the House of Delegates, that they joked with each other about it and asked each other how much each one was to get? I was not in the House of Delegates in May, I don't know what they done. During the time the Suburban bill was up did you go in the room adjoining the room of the House of Delegates with eighteen other members and station the sergeant-at-arms at the door to keep out of the room other men? There never was eighteen or nineteen or twenty-one. Some of the boys used to go in and smoke and play cards. The water-closets and lavatories were in there. It was open to all members. Did you go in there with eighteen other members on

different occasions while the Suburban bill was up, shut the door and station the sergeant-at-arms there to keep other members out? I never was in there.

Edward H. Sprick, A. G. Wellmer. Have known Mr. Lehman for years and his reputation for truth and honesty has always been good.

John P. Sweeney. Am in the teaming business, was a member of the House of Delegates in 1900, 1901, knew Mr. Lehman quite well. There was not to my knowledge any combine in the House of Delegates for the purpose of controlling legislation. We caucused to elect officers. Know of a room off to one side of the House of Delegates called a retiring room; it was used for smoking, lounging, playing cards, the closets are in there.

Mr. Folk. Did you try to get in there when the crowd was in there? A. Yes, sir. Didn't you testify before the grand jury that when the members of the combine were in the room they kept you and Cronin and the members of the minority out of the room? I don't think so, they could not keep anybody out of the room. I ask you if you testified to that before the grand jury? Don't remember testifying to that. The question you asked me, I think, was if there was a combine, I didn't know of a combination, I told you at the time there was an organization, at the first organization of the House of Delegates we elected Tambllyn as speaker and Tambllyn voted himself out of office, I said for that reason I was not glad because they didn't vote for Ed. Murrell for speaker. They left me out of the organization.

IN REBUTTAL.

Harry M. Coudrey, Dorsey A. Jameson and William R. Hodges testified for the State that in their opinion the prisoner's reputation was not good.

Paul Reiss (recalled). At the time the conversation took place between myself and Julius Lehman regarding the \$75,000 in the Lincoln Trust Co. no one was present but Mr. Lehman and myself. The conversation took place in my office in the Wainwright Building.

Know the man named Gadsdorf. Mr. Lehman was in the habit of coming down with friends of his and I think Gadsdorf was one of them although I am not positive. I might not recognize the person if I saw him.

The day the conversation took place concerning the \$75,000 I am almost positive he was not with Lehman; know he was not present in my private office.

THE INSTRUCTIONS TO THE JURY.¹

JUDGE RYAN. 1. If you find and believe from the evidence that, at the city of St. Louis, State of Missouri, and within three years next prior to the 31st day of January, A. D. 1902, there was pending in the Municipal Assembly of the City of St. Louis a certain ordinance (known as Council Bill No. 44) by which it was proposed to grant certain rights, privileges and franchises to the St. Louis & Suburban Railway Co., a railroad corporation; that one John K. Murrell was at that time a member of the House of Delegates and of said Municipal Assembly; that said John K. Murrell, either for himself or for himself and other persons, members of said Municipal Assembly, made any agreement or undertaking with Philip Stock, as the representative or agent of the said St. Louis & Suburban Railway Co., that the sum of \$75,000 should be deposited in a lock box of the Lincoln Trust Co., in said city of St. Louis, in the joint names of said John K. Murrell and Philip Stock, with the understanding between them that, upon said ordinance being passed by the said House of Delegates, the City Council and signed by the mayor, said sum should be turned over to the said John K. Murrell for his own use and for the use and benefit of himself and other members of said House of Delegates, then it was the right and duty of the Grand Jury of the City of St. Louis, at the December Term, A. D. 1901, to diligently inquire concerning said matters, and to cause to come before them, and to examine under oath, any and all persons who might have knowledge of said matters, and such knowledge, and the testimony concerning same, was material to the issues and to such investigation.

¹ According to the Missouri practice, instead of charging the jury orally, the Judge before the counsel address them, delivers to the jury written instructions which they take with them to the jury room.

2. If you believe and find from the evidence that in the month of January, A. D. 1902, there was a grand jury within and for the city of St. Louis, impanelled and sworn and charged in the circuit court of said city for the December Term, A. D. 1901, and that during their term of service they were engaged in the investigation of the matters referred to in the indictment, and as set forth in instruction No. 1, given by the court; that while so engaged the defendant was summoned and appeared before them as a witness to testify his knowledge, if any he had, touching the subject-matter of that investigation; that he was then and there sworn by the foreman of said grand jury to testify to the truth, the whole truth and nothing but the truth of and concerning said matter and that he did then and there take such oath; that after being so sworn by said foreman, and before said grand jury he did then and there falsely swear and testify under oath that he did not know of and had never heard of the existence of the said \$75,000 deposited in the Lincoln Trust Co., and if you further find and believe from the evidence that in truth and in fact the defendant did, at the time he so testified under oath, well know, aside from any information he may have acquired through the newspapers, of the existence of the said sum of \$75,000 and that said sum was deposited in a box in the safe deposit vault of said Lincoln Trust Co., and that when he so swore and testified under oath (if you find and believe from the evidence he did so swear and testify), he willfully and corruptly testified falsely, you will find him guilty of perjury as charged in the indictment and assess his punishment at imprisonment in the penitentiary for a term of not less than two (2) years nor more than seven (7) years, and unless you so believe and find from the evidence you will acquit him.

3. You should not convict the defendant unless you believe from the evidence that the falsity of his said testimony, as alleged in the indictment, has been fully established to your satisfaction and beyond a reasonable doubt, either by the testimony of more than one credible witness or by the testimony of one such witness, corroborated by other evidence in the case which convinces your minds of the truth of the testimony of such single witness to the fact, and of the falsity of defendant's testimony before said grand jury; and not then, unless you further find from the evidence the existence of all other elements of the offense and of the facts necessary to authorize his conviction as such other elements and facts are set out in the preceding instruction; that is, to say, before you can find the defendant guilty of perjury under this indictment it devolves upon the State to prove to your satisfaction and beyond a reasonable doubt that a sum of \$75,000 was deposited in a lock box of the Lincoln Trust Co., in the city of St. Louis, in the month of November, A. D. 1900, in the joint names of Philip Stock and John K. Murrell, which money was deposited to be paid to said John K. Murrell, as a member of the House of Delegates, for the use and benefit of said John K. Murrell and other members of the House of Delegates as a bribe to secure the passage of an ordinance by said

House of Delegates in favor of the St. Louis and Suburban Railway Company; that defendant, as a witness before the said grand jury of the December Term, A. D. 1901, testified under oath that he had no knowledge of the fact (aside from any information he may have acquired through the newspapers) that said sum of money was deposited in said box at said Trust Company, and also by the testimony of two credible witnesses, or one credible witness and corroborating circumstances proven by other credible witnesses in the case, which convinces your minds beyond a reasonable doubt that the defendant, at the time he so testified before said grand jury, did (aside from any information he may have acquired through the newspapers) know that said sum of money had been so deposited with said Trust Company.

4. The court instructs the jury that, although they may believe from the evidence, beyond a reasonable doubt, that defendant was a member of the House of Delegates on November 30th, 1900, and prior thereto, that fact of itself is no evidence that the defendant knew that seventy-five thousand (\$75,000) dollars was deposited by Philip Stock and J. K. Murrell in the Lincoln Trust Co.

5. If the jury find and believe from the evidence that the defendant first learned of the \$75,000, deposited in the Lincoln Trust Company, through the newspapers, and prior to January 31st, 1902, had no knowledge of such deposit, except what he may have acquired from the newspapers, then you will acquit defendant.

6. The testimony of Philip Stock and Charles H. Turner regarding the deposit of \$75,000 in a box of the Lincoln Trust Co., and the arrangement with John K. Murrell under which said deposit is alleged to have been made, was admitted solely for the purpose of assisting you in determining whether or not such a deposit was made by Stock and Murrell jointly, with an understanding that the money was to be paid to said Murrell for himself, and others, as an inducement for the passage of the ordinance known as Council Bill 44, and their testimony of itself does not tend to prove, and should not be considered by you as tending to prove, that the defendant had any knowledge of such deposit.

7. You are further instructed that the indictment contains the formal statement of the charge, but is not to be taken as any evidence of defendant's guilt.

The law presumes the defendant to be innocent, and this presumption continues until it has been overcome by evidence which establishes his guilt to your satisfaction, and beyond a reasonable doubt; and the burden of proving his guilt rests with the State.

If, however, this presumption has been overcome by the evidence, and the guilt of the defendant established to a moral certainty, and beyond a reasonable doubt, your duty is to convict.

If, upon consideration of all the evidence, the jury has a reasonable doubt of the defendant's guilt, you should acquit; but a doubt to authorize an acquittal on that ground ought to be a substantial doubt touching the defendant's guilt, and not a mere possibility of his innocence.

You are further instructed that the previous good character of the defendant, if proved by the evidence to your reasonable satisfaction, is a fact in the case which you should consider in passing upon his guilt or innocence, for the law presumes that one whose character is good is less likely to commit a crime than one whose character is not good. But if all the evidence, including that which has been given touching the previous good character of defendant, shows him to be guilty, then his previous good character cannot justify, excuse, palliate, or mitigate the offense.

You are further instructed that you are the sole judges of the credibility of the witnesses and of the weight to be given to their testimony. In determining such credibility and weight you will take into consideration the character of the witness, his manner on the stand, his interest, if any, in the result of the trial, his relation to or feeling toward the defendant or any witness for the State, the probability or improbability of his statements, as well as the facts and circumstances given in the evidence. In this connection you are further instructed that if you believe that any witness has knowingly sworn falsely to any material fact, you are at liberty to reject all or any portion of such witness' testimony.

THE SPEECHES TO THE JURY.

Mr. Bishop opened for the State, reviewing the testimony and referring sarcastically to the members of the last House as men whose hearts and intellects had to be compensated for their support of the Suburban bill. As to Lehman's knowledge of the \$75,000, he cited his connection with the "combine" and dwelt at some length on the testimony of Paul Reiss, who said Lehman came to him for assistance to get the key from Stock so they could divide the money among "the boys." He declared that Reiss had done the right thing in telling of the corrupt proposition made to him. "Only when a client has been indicted and has engaged a lawyer to defend him has the lawyer a right to keep a guilty secret from him." "In any other case it is his sworn duty to reveal fraud which is proposed to him. That some lawyers think and act otherwise is so much the worse for the legal profession."

Mr. Harvey impugned Reiss' action in testifying regarding his conversation with Lehman, his client. At the same time he declared that the conversation had never taken place, and that Lehman had never mentioned to Reiss the subject of the \$75,000. He said that the combine, if any could be said to

exist, related chiefly to the election of a speaker and the appointment of committees, and did not stand for unity of action on all bills. He reviewed the public indignation against the crime of bribery and the disclosures of the recent investigation. He shared in that indignation, but asked why a sacrifice should be made of Julius Lehman. He said he had not been connected with the bribery plot, and if the State needed victims upon which to lay the matter, why should not they select the men who did the bribing. They had come forward willingly to tell what they had done, he said, and one of them had even done the bribing without any pay and hope of reward. Why not convict the men who signed the notes to do the bribing.

Lehman was charged with denying certain things which he was said to know. He asked how was anyone to know what a man knew except by what he said? He said it was a case of Reiss versus Lehman and asked which should be believed. Lehman was corroborated by Gadsdorf; Reiss was not. He was present when Lehman gave Reiss the \$400 check, and nothing was said about the \$75,000 in the safe deposit box at the Lincoln Trust Company.

MR. FOLK FOR THE STATE.

Mr. Folk. If the Court please, and, Gentlemen of the jury, I want you to understand at the outset that it is my desire that you should try this case just as if the perjury charge had arisen out of any other matter than that of bribery. I would have you understand that if we were trying the case of bribery here I would want you to try that case just as you would try any other case. The suggestion made here that on a charge of bribery a conviction would be had whether there be evidence or not, I think, is unwarranted. As the prosecuting officer I say I want no man convicted unless the evidence justifies it; I want no man under sentence of law except that sentence be warranted by what the man has done himself; it matters not whether the charge be arson, murder, bribery or perjury, I want the evidence to satisfy your minds. You are

here the same as I am, to uphold the law, to punish the guilty and to vindicate the innocent. We are engaged in a common purpose, a common cause, you as jurors and I as circuit attorney. I have no more desire that any innocent man be convicted than you have. I want every man to get a fair trial, but I want the trial to be fair to the State as well as to the defendant. The talk here about a fair trial is intended to insinuate into the minds of the jurors something that would cause them to lean the other way and prevent them giving the State a fair trial. We want the State as well as the defendant to have a fair trial.

Let us consider the facts brought out in this case fairly and impartially without prejudice against the defendant and without bias in his favor; let us consider the evidence as jurors and as the prosecuting officer. He stands here charged with this crime and I have no prejudice against him, and neither have you personally. While we have prejudice against the crime there is none against him. We find in this case a remarkable condition of affairs; we find that in this city has existed a municipal assembly composed of a House of Delegates and City Council. We find that debauchery and bribery have existed in the House of Delegates. We find that a member of that House of Delegates when a bill was pending before it went to the people interested in the passage of the bill and demanded money for himself and his associates as a condition for voting for the bill; we find that, after several interviews, the demand on the part of the House of Delegates, made, as he said, to Philip Stock on behalf of himself and his associates, was finally acceded to; we find Philip Stock going to the Lincoln Trust Company with John K. Murrell of the House of Delegates and putting up \$75,000 in a lock box, Stock holding one key and Murrell holding the other key for the House of Delegates, the agreement being that when the bill should be passed the money should be turned over to Murrell for himself and his associates in the House of Delegates. There you have the bribery proven clearly and distinctly and the money itself was produced in

court. Not once in a thousand years has bribery been so unmistakably proven. The evidence of it is before your very eyes. They say somethin about Stock and Turner. We are not trying Stock and Turner now. Whatever Stock and Turner may have done I do not stand here to apoloize for them one iota. What they did may be deserving of the highest punishment, but I do say that it is to their credit after having done what they did that they went before the grand jury when called there and told the truth instead of perjuring themselves as this defendant did. It is something to their credit that after having committed the offense they came into the temple of the law and, kneeling at the bar of justice, told the truth. Their practices are matters of subsequent consideration and we are not trying them now. Neither are we trying Nicolaus or Wainwright. Turner may not have known what they knew about the deposit, and what he says may be very true. These gentlemen for the defense try to bring foreign issues to confuse your minds as to the real facts that you should determine. They talk about Turner, Stock, Nicolaus and Wainwright, but they are not on trial, and what we want to determine is, has Julius Lehman been guilty of perjury, not whether Nicolaus and Wainwright have given bribes, but has Julius Lehman been guilty of perjury in saying he knew nothing of the \$75,000 deposited in the Lincoln Trust Company when in fact he did know. This condition of affairs has developed bribery in our municipal assembly and in our legislative halls. Bribery is not between private individuals. You may get some private person to do something for you and pay him for it and the law takes no cognizance of that. The law is only concerned when a public official is corrupted because that is the object of the law, to preserve laws from contamination at their source, so the law makes it a crime to bribe any official or for any official to take a bribe. Under our system of government the power of every official belongs not to him but to the people who gave it. Every power possessed by an official comes from the people, and the right to vote franchises and to legislate belongs to an official's con-

stituents, and when he sells it, he sells that which does not belong to him but to the people he represents, and commits an offense worse than larceny because he not only plunders but violates the oath of office which he has taken. It is worse than murder for a corrupt official under the cloak of hypocrisy and under the guise of law to steal that which does not belong to him, but to the people, and by stealth to poison the very source of law and prostitute himself to venal ends. It is the greatest offense that can be committed against the people, the crime of bribery. When you go to any city and find bribery has existed in its municipal assembly you will find a condition of affairs where taxes are high, where public institutions are neglected, where streets are unpaved and sewers not made, and if you will ask why this condition of affairs, if the answer made be true, it will be that the public servants have betrayed their trust, that the public servants have made their offices a private snap instead of a public trust. We had this condition of affairs; we had these charges of this great crime of official bribery, which, if allowed to go on, would corrupt the administration of justice; and which, if allowed to go on, would corrupt all of our laws at their source. When the December grand jury met in January, 1902, the question was, had John K. Murrell taken this bribe of \$75,000 on behalf of himself and his associates in the House of Delegates. We had the grand jury investigating that matter, a matter of so much importance to you and to every citizen of this city; this defendant was called before that body, and, when asked whether he knew anything about it, he said he did not know, and when asked if he had heard, he said he had not heard. He went before that body and, with a lie in his mind, and a lie on his lips, he took the oath before Almighty God to tell the whole truth, and then perjured himself. Why should he have done it? Because the evidence shows that he knew of it and was interested—Was Murrell to get all of the \$75,000 just for himself? You cannot believe it. He did not pretend to Stock that he represented only himself, but other members of the House of Delegates. He was not to get it

all; it was to be divided between the members of the House of Delegates, or members of the combine, when the bill should have passed. Murrell and Lehman were members of the same House of Delegates, and while that is not sufficient of itself to say that Lehmann had knowledge, yet he, by reason of being a member, was more apt to know of it than a man not a member, and, taking into consideration his association with Murrell, applying your common sense to the relations that you know from the evidence existed between them, you can say to a moral certainty that Lehman knew what Murrell knew regarding the \$75,000. Not only was he a member of the House of Delegates with Murrell, who had the key to the box where the \$75,000 was locked up, but he was a member of the combine with Murrell. Who was to get this money if Murrell was not to get it? It is plain from the evidence that the combine of nineteen members was to get it. Do you suppose they were to get it and not know anything about it? Is it reasonable to suppose that the combine was utterly ignorant and Murrell was acting on his own accord? Applying the same common sense rules that you have the right to apply, you know the combine held its meetings and it appointed John K. Murrell as its agent to go to Philip Stock for the money. Lehman was in the room when he was appointed. You have the members of the House with Lehman; you have the members of the very combine that was to get the money, and didn't he know of it? Can you doubt that he did know of it? Can you believe that Julius Lehman could be a member of the combine in the House of Delegates and the members could get \$75,000 for their votes and Julius Lehman not know about it? If you do, you do not know the man. Julius Lehman, of course, knew about it. You have Julius Lehman himself going to Paul Reiss in May of last year and saying to Reiss, "Now, you are a member of the House of Delegates, you can be of some service, you go and see Philip Stock, there is \$75,000 locked up in the Lincoln Trust Company to go to the House of Delegates or be paid the House of Delegates when the Suburban Bill should pass. Stock held one key and the other

was held by a member of the old House of Delegates. You go to Stock and get Stock with the boys and effect a settlement." That shows it. You do not have to rely on the fact that he was a member of the House of Delegates with Murrell, although that is a strong circumstance. You do not have to rely on the fact that he was a member of the combine with Murrell and others, you have the positive testimony of one to whom Lehman went and told all about it, showing that Lehman was to get part of the money himself. If he was to get part of the money, of course he knew the money was there and knew the purpose for which it was to be applied. There cannot be any escape from that. That is the only reasonably common sense view to take of it as I see it. Talk about the communication of Reiss being privileged. As long as the defendant denies that he had a talk with him I do not see what difference it makes whether there is any privilege or not. If Lehman made that statement he made it and it was not a privileged communication. Mr. Harvey made the motion to strike out the evidence of Paul Reiss on that very ground that it was a privileged communication and the Court held it was proper.

Mr. Harvey. We object. That is not a proper statement.

The Court. It is part of the record.

Mr. Harvey. We could not have made it until after the testimony was in.

The Court. Counsel has the right to comment on anything that occurred during the trial of the case as part of the record of the case.

Mr. Folk. It was not a privileged communication for the very reason that by the mere fact of being a lawyer he is not privileged to violate the law. It is his duty to uphold the law and be a minister of law and not of crime. When a man goes to a lawyer and tries to get him to commit a crime there is no privilege in that. When Lehman went to Reiss and tried to induce him to get the money out of the lock box that was put up for the purpose of bribery, he tried to get Reiss to commit a crime, to become an accessory to the crime

of bribery. No honest man, no honest lawyer, would have listened to or entertained that proposition, and Mr. Reiss very properly said to him that he would have nothing to do with it. There is no more privilege in a man going to a lawyer and trying to get a lawyer to commit a crime than in going to a minister of the gospel and trying to induce him to go on some round of debauchery or immorality. A lawyer is a minister of the law and he must uphold the laws, and when one goes to a lawyer to advise with him how best he should assassinate you the lawyer's lips are not closed to prevent him from going to you and telling you about it. His lips are not closed to prevent him from coming into court and saying, "That man came to see me about the commission of a crime." The fact that one is a lawyer does not give him the privilege to go ahead and violate the law or let any one else violate the law. So far as his privilege goes it is to defend criminals in court before juries, he can do that, but when he advises persons to commit crimes, the lawyer becomes just as much a criminal as the man who does it. Perhaps we have too many of that kind of lawyers. It is an honorable profession as long as it is kept within the bounds that it was intended. As long as they are ministers of the law they are the greatest agencies for good, but when they become ministers of crime they are the greatest agencies for evil in a community.

I say that Paul Reiss did right and the Court says he did right. He acted properly in telling of the attempt made on him to get him to commit a crime and he did nothing to subject him to the criticism they have attempted to bring against him in order to prejudice you against him. What he did is what any good and honest citizen and honest lawyer should have done, and his evidence given under these circumstances is entitled to the greatest weight and should receive it.

Now, they talk about this man Gadsdorf, who went to the office, who says he was not there when the conversation took place. Suppose he was not. The fact that he was not there does not prove that the conversation did not take place. The

fact that you are not on Twelfth and Olive does not prove that a certain man that is not here is not there. That is negative testimony. A clock might strike and two of you might hear it and the others not, and the two that did hear it testify positively to the fact. Their testimony is worth more than that of ten testifying that they did not hear it. The fact that he did not hear the conversation does not prove it did not take place. That man put himself in the attitude of coming here and testifying for Lehman and it shows that Lehman told him what to say when he came on the stand, and why should he deny Lehman ever talked with him? You know perfectly well, and I know perfectly that Lehman talked with him about the case. These distinguished lawyers for the defense were too learned, too astute, too shrewd, to put him on the stand without talking with him and without knowing what he would say or testify to. Of course he was talked to by the defendant, and why should he deny it? Because it was arranged that his testimony was made up for the occasion, and yet it counts for nothing. You have the evidence that Lehman knew of this \$75,000, you have it from his own lips through Paul Reiss, a credible witness, you have it from the facts and circumstances surrounding him and Murrell, you have it from the fact that they were members of the House together, that they were close friends and associates, you have it from the fact that they were members of the very combine that was to get the money. Lehman comes here and he denies what Capt. Holtcamp said. He denies what Mielert said. He denies what Reiss said. Either Capt. Holtcamp has perjured himself and is a liar, either Mielert has perjured himself and is a liar, either Reiss has perjured himself and is a liar, or the defendant has perjured himself and is a liar. Has the defendant perjured himself or have the other three? Is it the defendant, or is it Capt. Holtcamp, Mr. Mielert and Paul Reiss? I do not believe that Capt. Holtcamp would come here and tell a falsehood. He has no motive for that. I do not believe that Mr. Mielert would come here and tell a falsehood. He has no motive for that. I do not believe that Paul Reiss would come

here and tell a falsehood because he has no motive for that, but the defendant has every motive not to tell the truth because he is here under a charge. I never saw a defendant get on the stand and admit the charge, and, of course, he would deny it, and he has every motive for denying it. The other three gentlemen had no motive in doing as they did. They have told the truth and the defendant has lied or the defendant has told the truth and those three men have lied. To my mind it is conclusive that the defendant is the one who has perjured himself.

I want you to consider the case, consider its importance and consider what it means. The object of punishment is an example to others; it is not to inflict wrong on the man charged; it is to prevent similar crimes by showing them what they may expect if they do likewise. They say this is not connected with bribery. It is. I would not have your minds influenced by that statement, but if a man can go before the grand jury and testify falsely concerning his knowledge regarding bribery, how can bribery ever be punished, how can evidence of bribery ever be discovered unless the grand jury can get the truth from witnesses? If a man goes before the grand jury and perjures himself and is not punished how can you expect other witnesses to go there and tell the truth? As an example to others the punishment is intended, so that when the grand jury is investigating crimes of bribery, or other crimes, and witnesses are brought before that body, they know, or they should know, that they will have to tell the truth or suffer the penalty for perjury. Let them know that a jury will not allow them to perjure themselves and withhold information from the grand jury. Let them know that, and its effect will be beneficial for years to come. Let them know that they can go before that inquisitorial body and say that they know nothing when they do know; say they have heard nothing when they have heard, and you will never have bribery discovered in this city for a thousand years. It will be impossible to do it, but the result of a conviction in this case will be of inestimable benefit as an example to others, and in the

upholding of the officers of the law and grand juries in their effort to purify affairs. An acquittal would be hailed with delight by all those who bribe and take bribes, and all those who go before grand juries knowing all and saying they do not know.

Gentlemen, this case is of inestimable importance and the result of your verdict will be felt in the city for years to come. You can uphold the arms of the officers of the law and grand juries, or you can render them powerless and helpless against the forces of evil.

Gentlemen, I ask you in the name of all that is good and holy; I ask you in the name of this great city; I ask you in the name of all that you hold dear within it; I ask you in the name of justice; I ask you in the name of the oaths you have taken, to vindicate the law and by your verdict in this case set the stamp of your disapproval on bribery and perjury with such force as will be felt in this city throughout the years to come and cause us to pass from evil to good and from darkness into light.

THE VERDICT AND SENTENCE.

May 17.

The *Jury* retired, and soon returned into court with the following verdict, which was read by the *Clerk*: "We, the jury in the cause of State v. Julius Lehman find the defendant guilty of perjury, as charged in the indictment and assess the punishment at imprisonment in the penitentiary for two years. —H. C. Oyler, Foreman."

July 7.

Today the motion for a new trial was overruled by the Court and the prisoner sentenced to imprisonment in the State penitentiary for two years; that he pay the costs of the prosecution and stand committed until the sentence be complied with. The prisoner's counsel asked for an appeal to the Supreme Court, which was granted by the Court and the prisoner was admitted to bail in the sum of \$10,000.

The Supreme Court reversed the conviction because of a technical error in the instructions. *State v. Lehman*, 175 Mo. 619.

THE TRIAL OF ROBERT M. SNYDER FOR BRIBERY, ST. LOUIS, MISSOURI, 1902.

THE NARRATIVE.

Robert M. Snyder, a capitalist and promoter, of New York and Kansas City, came to St. Louis to obtain a street railroad franchise from the Municipal Assembly. The terms and privileges were very inimical to the present owners of the street railroad. But they felt secure, as through Edward Butler they were paying seven members of the Council \$5,000 a year each and a special retainer of \$25,000 to Councilman Uthoff to watch the salaried boodlers. When Snyder found Butler and the combine against him, he set about buying the members individually, and, opening wine at his hotel headquarters, began his bidding for votes; and his bill, the Central Traction Bill, was introduced in the Municipal Assembly. The combine did not go right over to Snyder, they saw Butler, and with Snyder's valuation of the franchise before them, made the boss go up in his price. Then they called a meeting in Gast's Garden to see if they could not agree on a price. Butler sent Uthoff there with instructions to cause a disagreement, or fix a price so high that Snyder would refuse to pay it. It was now each man for himself, and all hurried to see Butler, and Snyder too. In the scramble various prices were paid; but Snyder was able to offer the most and his bill was passed.

It was in the investigation of the Suburban Railway combine that Mr. Folk came across the evidence of this, for the Central Traction affair antedated the Suburban scandal, its odorous history being made in the year 1898. But it was too late to punish the malefactors, for the Missouri statute of limitations was a bar to prosecution after three years from the commission of a crime like this if the parties accused lived in Missouri. This protected all the bribe-takers, but Snyder, one of the bribe-givers, had lived most of the time in New York City, so he was arrested and indicted for bribery.

The principal witness was Councilman Uthoff, who told a very plain story. One Sunday in April, Snyder came out to his home and he told Snyder that his price was \$50,000. A few days later Dieckmann, the speaker of the House of Delegates, called and brought a package from Mr. Snyder which he handed to Uthoff. The package contained \$50,000. Some time after he returned the money to Snyder and a new arrangement was made by which he was to have \$100,000 if he voted for the Central Traction Bill and a bill for a gas franchise which Snyder was promoting. But Snyder failed to pay this and left the city. Uthoff pursued him to New York and found him at the Waldorf-Astoria Hotel. He besought Snyder for the \$50,000. Snyder gave him just \$5,000, taking by way of receipt a signed statement that the reports of bribery in connection with the Central Traction deal were utterly false; that "I (Uthoff) know you (Snyder) to be as far above offering a bribe as I am of taking one." The prisoner made no denial of his guilt; but his lawyers made a great fight on the question of residence, bringing a multitude of people from Kansas City who swore that they had always considered him a resident there and that his visits in New York were only temporary business ones. But the jury looking to the real question found him guilty and sentenced him to five years in the State prison.

THE TRIAL.¹

In the St. Louis Circuit Court, Criminal Division, October 1902.

HON. O'NEILL RYAN,² Judge.

September 29.

The grand jury of the city of St. Louis had, on April 5, returned an indictment against Robert M. Snyder, charging him with having, on or about May 22, 1898, agreed to pay to

¹ *Bibliography.* "In the Supreme Court of Missouri. State of Missouri v. Robert M. Snyder, Bribery. Appeal from the Circuit Court of St. Louis, O'Neill Ryan, Judge. Transcript of the Record."

² "Reports of the Cases Determined by the Supreme Court of the

Frederick G. Uthoff, a member of the city Council the sum of \$50,000 if he would, in his official capacity, vote in favor of an ordinance before said city Council giving to The Central Traction Company the right to construct, operate and maintain on the streets of said city a passenger railroad.² The case, after a number of continuances, was set for trial today.

State of Missouri. Perry S. Rader, Reporter. Vol. 162. Columbia, Mo. E. W. Stephens, Publisher."

The St. Louis *Globe-Democrat*, The Kansas City *Star*, The St. Louis *Republic* and the St. Louis *Post-Dispatch*, Oct. 1, 2, 3, 4 and 5, 1902.

And see Bibliography, *ante*, p. 419.

² See *ante*, p. 419.

³ The Grand Jurors of the State of Missouri, within and for the body of the city of St. Louis, now here in court duly impanelled, sworn and charged, upon their oath present:

That on (or about) the twenty-second day of March, in the year one thousand eight hundred and ninety-eight, the said city of St. Louis was a municipal corporation in the said State of Missouri, and that the legislative power of the said city of St. Louis was by law vested in a Council and a House of Delegates, styled the Municipal Assembly of the City of St. Louis, the members whereof were elected by the qualified voters of said city; that one Frederick G. Uthoff was then and there a public officer of said city of St. Louis, to-wit: A member of the said Council and of said Municipal Assembly, duly elected and qualified, and was then and there acting in the official capacity and character of a member of the said Council.

That there was then and there pending and undetermined before the said Municipal Assembly and in the said Council, and brought before the said Council for the consideration, votes and decision of the members thereof, as a legislative body of said city as aforesaid, and so before the said Frederick G. Uthoff in his said official capacity and character as a member of said Council, a certain measure, matter and proceeding, to-wit: a certain proposed ordinance of said City of St. Louis (known and designated as House Bill No. 451, and which had theretofore been passed by the said House of Delegates and certified therefrom to the said Council), whereby it was proposed that the said city of St. Louis should grant certain valuable privileges, rights and franchises to the Central Traction Company of St. Louis (a railroad corporation), to-wit: The right to construct, operate and maintain a single and double track passenger railroad upon, along and across certain public streets and highways of said city of St. Louis:

That it then and there became and was the public and official duty of the said Frederick G. Uthoff, as a member of said Council, and in his official capacity and character as aforesaid, to give his

*Joseph W. Folk,*⁴ *C. O. Bishop,*⁵ and *A. C. Maroney,*⁶ for the State.

*H. S. Priest,*⁷ *F. W. Lehmann,*⁸ *Morton Jourdan,*⁹ and *William Warner,*¹⁰ for the Prisoner.

vote upon the said matter, measure and proceeding and for or against the said proposed ordinance without partiality or favor; that then and there one Robert M. Snyder, well knowing the premises, but then and there unlawfully, corruptly and feloniously devising, contriving and intending to corruptly influence the opinion, judgment and vote of the said Frederick G. Uthoff, in his said official capacity and character as a member of said Council and as a public officer as aforesaid, and in favor of the passage and enactment of the said proposed ordinance, so pending and brought before the said Council as aforesaid, did then and there unlawfully, corruptly and feloniously, directly and indirectly, make and enter into a corrupt understanding and agreement with the said Frederick G. Uthoff (as a member of the said Council); that upon the payment of a large sum of money, to-wit: The sum of fifty thousand dollars, by the said Robert M. Snyder to the said Frederick G. Uthoff, the said Frederick G. Uthoff would and should (as a member of said Council, and in his official capacity as a public officer as aforesaid) give his vote for and in favor of the passage and enactment of the said proposed ordinance by the said Council; and did then and there unlawfully, corruptly and feloniously (directly and indirectly) give the said sum of fifty thousand dollars in money to the said Frederick G. Uthoff (as a member of said Council) under and in pursuance of the aforesaid corrupt understanding and agreement that the said Frederick G. Uthoff (as a member of said Council) would and should give his vote (as a member of said Council) for and in favor of the passage and enactment of the said proposed ordinance of the said Council:

And that since the said twenty-second day of March, in the year one thousand eight hundred and ninety-eight the said Robert M. Snyder has not been an inhabitant of or usually resident within the State of Missouri; contrary to the form of the Statute in such case made and provided and against the peace and dignity of the State.

⁴ See *ante* p. 341.

⁵ See *ante* p. 342.

⁶ See *ante* p. 341.

⁷ PRIEST, HENRY SAMUEL. Born Ralls County, Mo. Graduated Westminster College. Admitted to bar and practiced at St. Louis until 1894, when he was appointed United States District Judge. Resigned in 1895 and returned to practice. President Missouri Bar Association, 1891.

⁸ See *ante* p. 342.

⁹ See *ante* p. 342.

¹⁰ WARNER, WILLIAM (1839-1916). Born Wisconsin. Entered University of Michigan, 1861, but left for the army, where he

The Counsel for the defense filed the following plea to the indictment:

That the State of Missouri, plaintiff, ought not try and prosecute the indictment against him, because the said indictment was not found within three years after the alleged commission of the alleged offense, as is shown upon the face of the said indictment, and because it is charged in said indictment that the offense was committed on the 22nd day of March, in the year 1898, and said indictment was found, returned and filed on the 5th day of April, 1902.

Defendant pleads such fact, together with section 2419 of the Revised Statutes of the State of Missouri, 1899, which said statute is in words and figures as follows: "No person shall be tried, prosecuted or punished for any felony, save as specified in the next preceding section, unless an indictment be found for such offense within three years after the commission of the offense," as a bar to said trial, prosecution or punishment. The defendant says that the exception provided in such section is one where the offense is punishable with death or by imprisonment in the penitentiary during life, and the defendant shows to the court that the offense charged in the indictment against him is not within the exception aforesaid, and that the punishment for the offense charged against him is by imprisonment in the penitentiary for a term of not less than two nor more than seven years.

Defendant further says that it is not true, as charged in the indictment, that "since the 22nd day of March, in the year 1898, said Robert M. Snyder has not been an inhabitant of nor was resident within the State of Missouri," but, on the contrary, the defendant avers the fact to be that during all times from the 22nd day of March, in the year 1898, and for many years prior thereto, and from the said 22nd day of March, in the year 1898, until after the said 5th day of April, 1902, and until the present time, the defendant has been an inhabitant and resident in the city of Kansas City, and has himself, with his family, been usually and customarily resident in the said city, and has been a citizen of said city and of the State of Missouri.

Mr. Jourdan asked that this special plea be considered and decided before the defense was required to plead to the crime itself.

served throughout the Civil War, reaching rank of Major. At its close, he began practice of law in Kansas City with his friend C. O. Tichenor, which firm continued until 1881, when it was succeeded by Tichenor, Warner & Dean. In 1883, Mr. Tichenor withdrew and the firm of Warner & Dean continued until his death. City Attorney Kansas City 1867. Prosecuting Attorney Jackson District 1868. Mayor Kansas City 1871. United States District Attorney. Commander in Chief G. A. R. 1885. Member of Congress Kansas City, 1884-1888. United States Senator 1906-1912. Member U. S. Ordnance Board 1912-1915.

The COURT denied a separate trial on this special plea and ordered the Prisoner to be placed at the bar, which was done.

The Prisoner pleaded *Not Guilty*.

October 1.

A special jury having been ordered the following jurors were today selected and sworn: Louis A. Anderson, Frank P. Crunden, Alonzo W. Davis, William F. Funston, Arthur C. Garrison, Robert L. Russell, Richard T. Shelton, John B. Slaughter, Clifton A. Scudder, Charles W. Wall, James L. Westlake and John R. Williams.

Mr. Folk. Gentlemen, before we plead the evidence in this case, it is my duty to briefly outline what the State expects to prove. There was pending in the Council and House of Delegates in 1898, an ordinance known as North and South bills, one and two, the first of which was passed, then vetoed and lost in litigation. The second was amended, passed, vetoed by the Mayor, then defeated. Then the Central Traction bill was introduced March 15, 1898, passed March 29, vetoed April 12, and passed over the veto the same day.

At that time, Frederick G. Uthoff was a member of the City Council. About April 3 or 4, 1898, the State will endeavor to show that Louis Dieckmann, then speaker of the House of Delegates, sent word to Robert M. Snyder that Uthoff wanted to see him. At this time Snyder was interested in the bill pending. Snyder met Uthoff in the latter's home, and the State expects to prove that Snyder said to Uthoff: "I want your vote." Uthoff's reply on the part of himself and other legislators, we expect to show, was: "That vote will cost \$50,000." Uthoff, meeting Snyder on the street later, said he wanted the money. Snyder said Dieckmann would take a package to him containing \$50,000. The package was carried by the House speaker to Uthoff's house, and there it remained several days. The next day, the day before the passage of the Central Traction bill, Uthoff saw Snyder and asked \$100,000 for the votes necessary to carry it. Snyder went again to Uthoff's home and took the package away. There was made an agreement with relation to the \$100,000, \$60,000 to be paid in currency and \$40,000 in notes. I expect also to show that the street car companies were then paying certain legislators \$5,000 annually to defeat any other street car transportation

legislation. The bill came up, was passed, but Snyder was not on hand to pay the money. Uthoff started downtown to find Snyder, and did find him in a restaurant, and Snyder said he did not have the money at the time. Next Uthoff learned that Snyder had gone to New York. Uthoff followed him there. Snyder met him graciously and entertained him at the Waldorf-Astoria. He paid him \$5,000 and secured a letter from Uthoff that rumors to the effect that money was used to pass the Central Traction bill were false. The letter will be shown you later, but in it, among other things, was: "I know you are as far above offering a bribe as I am above accepting one." We also expect to show that Snyder held this letter out to Uthoff, saying: "Sign that and you get \$5,000; otherwise not a cent." As to the question of residence, the State will endeavor to show that Snyder had resided at the Waldorf-Astoria in New York from October, 1899, to August, 1900, and that the time he spent in the eastern city was at least a year and a half. During this time Snyder had maintained a residence in Kansas City, where his children lived, but his home was in New York City.

The reason that Snyder needed Uthoff's vote was that members of the combine were being paid a salary by the other street railway companies and that vote and others were necessary, even if it took large sums of money. We will show you that Snyder moved to New York; that Snyder has said on several occasions that Kansas City was too small for him and that he did not care to go back there. For at least a year and a half after the crime, Snyder was a resident of New York. After we have shown these facts I feel sure you will bring in a verdict of guilty.

THE EVIDENCE FOR THE STATE.

Edwin E. Goebel. Am Deputy Clerk of the circuit court of this city and have in my possession the records showing the election of members of the Council.

Thomas E. Quinn. Am Dep-

uty Registrar of St. Louis and have custody of the oath book of the Council.

These two witnesses proved who were the members of the House of Delegates and the Council of the

Municipal Assembly of the city of St. Louis in 1895-1899; the oaths of office administered to them for the time covering the date of the alleged bribery, and among others that Frederick G. Uthoff was a member of the Council from April, 1895, to April, 1899, and duly qualified as such.

Charles R. Graves, who was Secretary of the Council in 1897-1898 and *George H. Martin* who was Secretary of the House of Delegates in the same years testified that a bill for an ordinance known as House Bill No. 59 and spoken of as the "first North and South Bill," was introduced in the House of Delegates, May 21, 1897, and that this bill was under consideration by the Council in July, 1897.

Also that a "second North and South Bill" No. 282 was passed by the Council. Both of these bills were for grants of franchises to the North and South Railway Co., authorizing the construction, maintenance and operation of street railways in the streets of St. Louis. There was also introduced into the Municipal Assembly a bill known as House Bill No. 541, the same as described in the indictment, which was an ordinance granting the Central Traction Co. of St. Louis the right to construct, operate and maintain street railways over and along certain streets in the city of St. Louis. The various proceedings of the Council were read in evidence, from which it appeared that it passed both houses, was vetoed by the Mayor and again passed over his veto.

Frederick G. Uthoff. Am in the grain and mining and

cattle business in St. Louis; in 1897-1899 was a member of the City Council. First met Robert M. Snyder at my house, No. 3415 Grand avenue, on Sunday, April 3, 1898; he was brought there by Louis C. Dieckmann, who had seen me previously and requested an interview with me and Mr. Snyder. I told Mr. Dieckmann to bring Mr. Snyder there, and they came on Sunday morning about noon, and we had a social chat together for probably half an hour. During that time Mr. Snyder told me that he lived in New York, had lived in Kansas City, he told me he was connected with a bank in Kansas City, he was a millionaire and so on, and finally he drifted on to the Central Traction bill. We were talking about money matters when he told me that he was a millionaire. I asked how he had made his money; he said he had made it partly in the real estate boom in Kansas City; that he had let go just at the right time and then went on to New York. When he commenced to talk about the Central Traction bill I told Mr. Snyder that was a hard matter for me to discuss or to vote for that bill as I was opposed to that bill, and he brought in other matters, Masonic lodge matters, and said I ought to consider that. The general conversation was that, we being brother Masons, I ought to favor him and help him with that bill. That was the substance of the matter. I told Mr. Snyder that I had been approached on that bill before and had been offered \$50,000 to vote for that bill. Mr. Snyder said—he took his book out of his pocket and figured and said, "that is

more money than I have got at present at my command," but, he says, "I will get that amount if you will vote for the bill and I will send it down here by Mr. Dieckmann." I never positively told Mr. Snyder I would vote for the bill for \$50,000 or any other amount. Dieckmann was not present during this conversation. I saw Mr. Dieckmann after that nearly every day down on the street; that was all the conversation between me and Mr. Snyder that morning.

Mr. Folk. You had better go into it a little more in detail, state what you said and what he said in respect to this \$50,000. It is not very clear to me what passed.

Mr. Uthoff. Well, I had been approached several weeks or months before that by two parties who asked me if I would vote for the bill, but I think that was the second North and South bill, as you call it, and I said, "this is a hard matter for me to do." The parties that approached me were John G. Brinkmeyer and Paulus Gast, two members of the Council.

I told Mr. Snyder I had been offered \$50,000 to vote for the bill; he said that was more money than he had at his command, or to his credit at the present time. He said he would probably have to sell some securities in order to raise that amount. Then he said he would raise it and send Mr. Dieckmann there the next day with the package with \$50,000, either in cash or collaterals. I told Mr. Snyder if I could see my way clear conscientiously I would help him out with his bill. Mr. Dieckmann came the next day with the package. We had a

general chat about different matters and when Dieckmann left there was a package laying on the sofa in the room. I took it upstairs and put it away. It was an envelope, an official envelope. A large sized envelope, six or seven inches long. The next time I saw Mr. Snyder was in a saloon on the corner of 11th and Market streets. I think it was one evening, it was at one of our meetings and Mr. Dieckmann was in the lobby and I told Mr. Dieckmann that I would not vote for the bill. Dieckmann is a coal merchant in North St. Louis, he was not then connected with the Assembly in any way, he was formerly speaker of the lower house, the House of Delegates. I told Dieckmann that I would not vote for that bill and to get his bundle back. Dieckmann told me that Snyder was across the street—I did not know where he was—and for me to go and see Mr. Snyder. I went over and saw Mr. Snyder and told him I could not vote for the bill, and for him to go to work and get the money back. He said if I did not vote for the bill he was a ruined man. I told him to come to the house and get his package. He came to the house the next day and I gave him his package. First I took a pair of scissors and clipped the end of it to see what was in it. I saw a lot of \$1,000 bills in there. I handed the package to Mr. Snyder. He took the contents out of it. I saw him count twenty-five \$1,000 bills and the balance, I suppose, was in other kinds of paper; what it was I don't know. Mr. Snyder says, "you had better keep this." I told him "no." Then he took away the package.

I next saw Mr. Snyder at his room at the Planters. Dieckmann brought me word that Mr. Snyder would like to see me at his rooms in the Planters House and so I went to the Planters Hotel and met Mr. Snyder and we talked about everything in general, social chat, and again drifted on to the Central Traction bill; Mr. Snyder then had a gas bill in view that he wanted introduced in the Municipal Assembly, and I can't remember every word that was spoken, but the substance of the matter was that the gas bill was put on to the Traction bill as a rider and the amount stipulated for that should be \$100,000 paid to me, \$60,000 the next day, in cash, and \$15,000 when the gas bill was introduced and \$25,000 when the gas bill had passed. He said he would meet or see me, pay me the \$60,000 at my house the next day. Mr. Snyder said he had a gas bill he wanted to introduce into the Municipal Assembly for a new gas company and wanted me to introduce it and get it through, assist in it, vote for it. In consideration of my doing that he would make the amount \$100,000 if I voted for the Central Traction bill.

I did not say positively I would do it, vote for the bill, I said "if I can help you through with it I will do it." Snyder did not come the next morning, but Mr. Dieckmann did somewhere near eleven o'clock. Dieckmann told me that Mr. Snyder told him to tell me to not leave the house until he would call as he had some kind of a trouble in reference to money matters. I stayed at my house that day till

three o'clock in the afternoon. As Mr. Snyder did not appear, I left the house and went to the City Hall to attend a committee meeting. There Snyder telephoned me about four o'clock for me to come up to his rooms immediately, very important business, and as I had time I went up. When I came into Mr. Snyder's room he said, "My God, you left the house too early, I was ten minutes late of meeting you," he said, it was a warm day. "I told him I was very sorry, but I left on time. Then Mr. Snyder put his hands in his pockets and pulled out two rolls of money and said, "Mr. Uthoff, here is \$35,000 for you," he says, "Dieckmann has got \$10,000, he is on the floor of the Council," he says, "I had \$60,000 but Charlie Carroll got \$15,000 out of me today." I told Mr. Snyder "I don't want your money;" he says, "you better take it;" I says, "I don't want it, if as a friend I can help you out on your bill I will do it;" then I went off, went back to the City Council. The bill came up that evening for passage over the Mayor's veto. I voted for it because I did not want to throw the gang down. Several months after that, I guess, I met Snyder at McTague's restaurant. My friends arranged the meeting between me and Mr. Snyder, Mr. Kobusch and Mr. Mephram. They arranged a meeting for Mr. Snyder regarding the story he had reported that he gave me \$50,000 for my vote, they arranged a meeting for me to meet Mr. Snyder at McTague's restaurant at twelve o'clock, at noon. I met Mr. Snyder there and when he sat down

to the table after Mr. Snyder had ordered, he says, "did you have an understanding with Mr. Meier?" I said, "what Meier?" He said, "President Meier of the Council." I said, "about what?" He said, "about voting on the Traction bill." Mr. Snyder said "the way you voted I was under the impression that Meier had given you the money. Meier is the man that got the \$50,000." He said it was sent through Fred Meier, his son. Mr. Snyder admitted on that occasion that he had not given me a cent; that Meier got the money. I next saw Mr. Snyder in New York at the Waldorf Hotel. I went there on business, and incidentally I met Mr. Snyder at the Waldorf Hotel; think we had a breakfast together, and then we talked over the Central Traction bill, brought up old matters, and Mr. Snyder agreed there, he said he had \$5,000

that belong to the promoters which he ready to turn over to me. I think I got \$2,500 during that visit and I got \$2,500 more, I guess, three or four months later on. After he stated he had \$5,000 left that belonged to the promoters, which he was willing to turn over to me, I told him it was all right so far as that was concerned. He said all right, for me to call in the evening at five o'clock. I went to call upon him at the appointed time, five o'clock and got the money, \$2,500 in cash. I next saw Mr. L. Snyder in New York in December at the Waldorf. He gave me the other \$2,500, then he had a letter dictated that he asked me to sign. I took the letter and copied it, then I told him there was no harm in my signing the letter, the letter would speak for itself.

New York, December 7, 1898.

Mr. R. M. Snyder, New York, N. Y.

Dear Sir:—I am surprised at your talk of yesterday, in which you stated that you had heard that I had said that while you did not offer me any money for supporting the Central Traction matter, I believe money was paid to other parties. I suppose you are now satisfied that I never made any such remarks, but in the event it ever comes up again, and to further assure in this matter, I desire to say this to you in writing, that from my acquaintance with you I believe you are as far above offering a bribe as I would be above receiving it. I supported the bill because I thought the road would be a benefit to the districts that needed it, and because I thought you intended to promptly build it. I hope you will go to work soon and prove I was right.

I am obliged to your invitation to dine with you, and go to the theater tonight, but I expect to leave the city on an early train.

Yours respectfully,

F. G. Uthoff.

I signed this letter at his request.

Mr. Folk. I show you a telegram dated at Greenville, Ill., January 11th, to Frederick G.

Uthoff, 608 Chestnut Street, St. Louis, "Arranged that matter. Party will give attention. Left

one o'clock. R." State what you know about that telegram.

Uthoff. I received the telegram. It was in reference to the Meier matter; Snyder was making an effort to get the money back from Mr. Meier. It was paid in 35 one thousand dollar bills, \$10,000 in smaller denominations, and \$5,000 certified check. The certified check Mr. Snyder said he got back. He did not say as to whether or not he got the money back.

Mr. Folk. At the time of your interview the first time had you received any money from any other persons to pass the Central Traction bill? Yes, from two representatives of the street railway companies—Ed. Butler and John Scullin. While the bills were pending Butler came to me and asked me to call a meeting of six councilmen and to try to influence them to oppose the Central Traction bill and the North and South bill. It was finally fixed that these members were to receive \$5,000 a year; this was paid for several months; Butler brought me the money in packages and I gave it to these members, who were Paulus Gast, John G. Brinckmeyer, Charles Rhuner and Kratz. On March 19, 1898, I introduced at Mr. Scullin's request the United Traction bill; it was to head off the Central Traction Bill; Scullin paid me \$25,000, but I returned it to him through Ed. Butler. There was a meeting at Gast's Garden to determine the amount we ought to get from Mr. Snyder; the members whom were there were Gast, Gaus, Brinckmeyer, Heckel, Thuner, Charles Carroll and Kratz. The day Snyder

was at my house he said that Carroll had got \$15,000 out of him that day.

Cross-examined. Am 56 years old; have been in business in St. Louis since 1868; for a long time in the grocery business; I took an oath to faithfully discharge my duties as Councilman; don't remember that I had in mind this oath when I agreed to accept the prisoner's bribe; I admit I violated my oath; realize that I am under oath now.

Louis C. Dieckmann. Am in the coal business in this city; was president of the House of Delegates; saw Snyder after the North and South bill had been vetoed and dropped and was asked by him to assist in the passage of the Central Traction bill; I arranged the interview between Uthoff and prisoner, but was not present in the room at the interview respecting the Central Traction bill testified to by Uthoff; the next day I took a package to Uthoff, an envelope, which was sealed, and at the request of Uthoff laid it down on the table or sofa; did not know what the package contained and was not told by Snyder. After this Uthoff told me he could not vote for the bill and wanted to see Snyder, and I went with Uthoff to the hotel, where we found him; was not present at the interview between the two.

George J. Kobusch. Live in St. Louis; am a car builder; prisoner came to see me in 1898 and spoke of a railway franchise bill. I was interested in the bill and met him a number of times with respect to it. The first first one was the "Second North and South Bill," being House bill No. 282. Snyder told

me at one time Uthoff wanted \$50,000 for his vote, and told me once that he had paid Uthoff that amount for his vote; this statement was after the bill had been passed, and was made in New York City. Uthoff told me he had returned \$50,000 to the defendant; do not know whether defendant had charged the other promoters with the \$50,000 as paid to Uthoff. Prisoner told me that he had paid Carroll, a member of the Council, \$17,500 for his vote, and that Carroll was handling money for some of the other men, members of the Council, Mr. Brinckmeyer and Mr. Paulus Gast, who were to get \$10,000 apiece. I sent \$10,000 from Mr. Mephram to Mr. Gaus; received the money from prisoner; did not get the \$10,000 which I sent to Gaus specifically from prisoner, but he gave me \$35,000 or \$45,000 which I was to give to Mr. Mephram for his services, and Mephram paid Gaus. The members of the Council supporting the bill were to get \$10,000 each. Prisoner said that he had paid altogether \$250,000 to pass the bill. Am now under indictment for perjury before the grand jury respecting my testimony before that body concerning these same transactions.

Edgar A. Mephram. Was employed by Mr. Kobusch to look up a route for the proposed street railway, and also to create a sentiment for the bill granting a franchise among the property owners; I secured the biggest petition for the measure that I had ever presented to the Municipal Assembly; saw the prisoner with reference to the Central Traction bill, and occa-

sionally with reference to the North and South bill; might have had some talk with him with reference to members of the Council and their votes; we were trying to create a sentiment favorable to the bill; cannot remember whether there was anything in these conversations with reference to the use of money or the "fixing" of members of the Council; do not remember so testifying before the grand jury.

F. E. Marshall. Am vice-president of the Bank of Commerce; when the second North and South bill was pending before the Municipal Assembly there was \$145,000 deposited in the Continental National Bank, to be held by me, as trustee, in escrow, to be paid out upon delivery to me of a legally completed franchise known as House bill No. 282 of the Municipal Assembly of St. Louis. This money was subsequently turned over to prisoner.

Cross-examined. Lived in Kansas City from 1892 to 1895; Snyder had a home there then and kept house; in 1898 visited Kansas City and went out to see him at his house on Independence avenue.

October 3.

Adolph Zaduk. Live in New York City; in 1898-1899 was a canvasser for the New York Directory for the district in which the Waldorf-Astoria Hotel is. Mr. Snyder's name appears in the 1899 directory thus: "R. M. Snyder. H. Waldorf-Astoria." The "H" means that this is his house or residence.

Alexander Konta. Was in New York City from the end of

March, 1899, to April 10, 1900, stopping at the Waldorf-Astoria; know the defendant, saw him frequently at the Waldorf, and at a banker's office at times; he lived at the Waldorf Hotel. During the summer of 1899 he went to Europe, sailing on the 10th of June and returning about the 6th of September. There were two days in the week that he was never in New York, but the remainder of the time he was usually there, but must say that I was not there all the time; was myself away off and on for a few days, and on July 20, 1899, sailed for Europe, returning the second week of October; sailed for Europe again on January 24, 1900, and returned on March 7, 1900; sailed again on April 10, 1900, and returned April 19, 1902. With the exception of these times I was from March, 1899, to April, 1900, in New York City at the Waldorf Hotel. Saw defendant there frequently; he had rooms at the Waldorf by the year, and had a desk in the bankers' and brokers' office of G. H. Bache & Co., in Wall street; used to see defendant there quite often; could not say that I saw him daily during this period in New York because defendant was away a few days every week. The apartments that defendant had at the hotel were like any other apartments in the house; defendant was absent from New York during that period about two or three days in the week, and I was under the impression that the rest of the time he was in New York a great deal.

So far as I know defendant was in New York on business as

any man would be who was living in the West and still keeping his home in the West and going to see his family; had business with defendant in New York and also in Europe in the summer of 1899. During his periodical absences from New York, the defendant frequently went to Boston, and was married there in January, 1900. Defendant brought his wife to the Waldorf in January, and they were there some weeks and then they went on a trip. They returned later to the Waldorf.

Cross-examined. During the period I was in New York my family was in St. Louis and my home was in St. Louis; was in New York on business; had taken rooms at the Waldorf by the year. It was a common custom for people who had a great deal of business in New York to so take rooms, because of the economy, a three months' discount on the year being allowed where they were so taken. My own business in New York was of a transitory nature, and I was there for the purpose of financing some matter in which I was engaged. A great many people from the West were in New York during that time. It was a period when a great many business enterprises were being promoted, and I saw a number of St. Louisans during that period in New York City on financial business, who were there quite as persistently as myself. Five months after I became acquainted with defendant, he told me he had a home in Kansas City, and spoke of pictures in his home. A part of the time we were in New York we were engaged in the same busi-

ness, and it was upon this business that we went to Europe. I went as a mere sojourner, to attend to the business, and believe the same was true of defendant, who went over at my request to assist in the business and came back when our business mission was over. Mr. Tenbroek, of St. Louis, was in New York a great deal of the time and he had an office there, but his home was in St. Louis. The Waldorf is a very large hotel, accommodates a great many people, and it is a place where you can find almost anybody from any part of the United States.

G. H. Tenbroek. Was in New York every month excepting January, 1900, from January 1, 1899, to and including July, 1900, but not continually. I was there on several matters of business and associated with me were Mr. Konta and Mr. Greenwood. First met defendant in March, 1899, and from that time until July, 1900, defendant made his place of abode at the Waldorf-Astoria, except during the period that he was away from New York. He went abroad in June, 1899, and returned in September; saw him repeatedly from March, and down town occasionally, but not often. When I saw him down town it was in the office of Bache & Co. Defendant had two rooms at the Waldorf. After his marriage defendant was at the Waldorf, but whether his wife was with him cannot state. During the interval from March, 1899, to July, 1900, saw defendant repeatedly. My stays in New York were from two weeks to three months. On some trips when I was there for two weeks, might

not have seen defendant at all. Simply met him at the Waldorf; my impression is that I met him repeatedly and frequently; had correspondence with Mr. Snyder beginning June 26, 1900. Letters were addressed to him at different places and answers were received from him sent from different places—New York, Kansas City, Sault Ste. Marie, Alexandria, Minn., and Toledo—most of them from Kansas City.

Cross-examined. Live in St. Louis and have all my life; St. Louis has always been my residence, and it was so during 1900; am engaged in St. Louis in the practice of law; have an office there and also had an office in New York; had frequent occasions to go to New York on business, returning to St. Louis when my business was done, residing always in St. Louis. During the year 1900 a great many people of my acquaintance living in the West were putting in a great deal of their time at the Waldorf. It was a period of active financial business, and, in a general way, the Waldorf was headquarters for people from the West who had financial business in New York. They gathered and met there in the evening in the corridors of the hotel. When I first met defendant my impression was that he was a New Yorker, but in the course of my acquaintance with him learned that he was from Kansas City and had a home there, and that he went to Kansas City, but how frequently cannot state; he did during the year of 1899 go occasionally to Kansas City.

Defendant was abroad with

Konta during the summer of 1899; recollect distinctly that after defendant's return from Europe he went occasionally to Kansas City; had then become more concerned to know defendant's movements and whereabouts; found that defendant had relations of some kind in Kansas City, and learned definitely in July, 1900, that he was connected with a bank there. The business I had with defendant related principally to the bank in Kansas City, of which defendant was president; the City National Bank of Kansas City.

Defendant had apartments by the year at the Waldorf. I did not have apartments on those terms. He was at the hotel about two-thirds of the time during the period mentioned; do not know how long I had known the defendant before I learned he was from Kansas City; my impression I first had that defendant was a New Yorker was not gotten from anything that he said, but simply the impression from the way defendant was living; knew two other people besides defendant, one a gentleman from Massachusetts and another from Rhode Island, who engaged rooms at the Waldorf by the year, and I knew also that Mr. Konta had rooms there by the year. It was a matter of economy, as it is subject to a discount of three months' rental.

Moses Greenwood, Jr. In 1899 and 1900 I was for more than half the time in the city of New York. Stopped at the Waldorf Hotel; knew defendant; saw him frequently at the

Waldorf mornings and evenings; had business with him in June, 1900. Defendant had a place of business in New York in Wall or Broad street. Was never in defendant's rooms at the Waldorf. Was introduced to defendant in June, 1900. First saw him at the Waldorf between March and May, 1899.

Cross-examined. I began stopping at the Waldorf in March, 1899, and continued there occasionally until September, 1900; am a married man with a family, who reside in St. Louis; made frequent trips to St. Louis during the period in question; was in New York on transient business, which kept me longer than I expected. In March, 1899, saw defendant frequently; was not thinking of the matter in any particular way, and could not say whether four or five days a week or six or seven. During this period I was away from New York, returning to St. Louis five or six times. Was in New York two or three weeks at a time, sometimes eleven and twelve weeks. My impression was that the Waldorf was Mr. Snyder's headquarters, as it was that of myself, of Mr. Konta and Mr. Tenbroek. I had an office in New York, but simply for the purpose of exploiting the deal I was interested in. It was not permanent and I did not contemplate a permanent location. I simply wished to be where I could interest financiers.

Shirley W. Johns. Was a reporter for the *St. Louis Star* in March, 1898, and interviewed defendant with respect to the franchise bill; in the course of the interview defendant told me

that while he had a residence in Kansas City, his home was in New York. It was a quite a long interview. That was only one of a great many statements that defendant made. In interviews of this kind I usually locate a man and ask him where he is from and where he lives. Cannot state definitely whether I asked the defendant that question on this occasion or not. My recollection is that he said that while he had a residence in Kansas City, his home was in New York.

John H. Aubeare. Was a reporter for the *Globe* in March, 1898. Saw defendant on the eleventh of that month with respect to the franchise bill. Had gone to the courthouse, gotten the record, and saw defendant's name among the incorporators of the company. I tried to connect him with Kansas City, and defendant tried to disabuse my mind, that he was not from Kansas City, but from New York; that his home was in New York, but he had business connections in Kansas City. Defendant did not say where he himself lived, except in New York. The conversation did not deal with personal matters at all, it was only in relation to the business I went to see him about. I sought to find out if it was not Kansas City parties interested with defendant in the enterprise. Defendant told me no, that he had plenty of capital, and said it was eastern capital. I told defendant I had heard he was from Kansas City. Defendant said no, from New York. I had in mind identifying the people connected with the enterprise. Do not know whether defendant

said that his "home," using that term, was in New York. Cannot remember the words. Don't know whether defendant said he had a home in New York. He said that his money or capital, or some such expression as that, was in New York.

William Stone Woods. Live in Kansas City, was president of the National Bank of Commerce of that city. In the spring of the year 1900, defendant was in my office and we had a conversation about the City National Bank which was organizing. Defendant was engaged in organizing the City National Bank, and Mr. Strain, who had been with me in his bank, had resigned his position to take a place in the bank defendant was organizing. Defendant came to my office and said that he had about made up his mind that he did not care to proceed with the organization of the City National Bank, but was under obligations to Mr. Strain, and if I would take him back there would not be any City National Bank. In that conversation defendant said he could not afford to come back to Kansas City to live. That his interests were east. This was early in 1900.

Cross-examined. Had known defendant for some twenty years in Kansas City, defendant had been engaged in banking in that city. He was at one time a director in the National Bank of Commerce; later was running a small bank, the Mechanics' Bank, and that continued until it was absorbed by the City National. The Mechanics' was a State bank, and defendant was president of that. When it was absorbed by the City National,

defendant became president of that bank. Know where defendant's home, house and residence was in Kansas City, and where it is today on Independence avenue, one of the best avenues in Kansas City. Defendant lived with his family on Independence avenue for several years. Before that he lived on Troost or Forrest avenue, moving in 1897. Defendant was giving some excuse why he would not organize the City National Bank. He said that he could not afford to come back, that his interest was in New York. He did not say that he was stopping or living at the Waldorf-Astoria. I did not ask where he was living. I would know of defendant having a home in Kansas City as well as I would know of Major Warner having one there; during all the years of 1897, 1898, 1899, clear down, and my understanding is that defendant's

house has been running there all the time, with his family there, his children and his sister; his sister-in-law, after the death of defendant's wife, continued to keep house, until defendant married the second time, his children living there all the time. Was never at defendant's house in Kansas City since the defendant bought it. Saw very little of defendant for quite a while previous to his organizing the City National Bank, say for a year or more. Lived within eight or ten blocks of the defendant's home. Defendant had been engaged in organizing the City National Bank for about thirty days before I had this conversation with him. Did not see defendant as much as I did Major Warner. Major Warner I saw nearly every week. He is quite a jovial kind of fellow and comes around often.

Mr. Priest. I demur to the evidence given by the State and desire to be heard on this demurrer. The testimony on the charge of bribery rests with a single briber, who, if there was an offense, was an accomplice. The testimony of the witness, Uthoff, shows an attempt to accomplish that offense. The testimony of Uthoff was that he never by sign or act or in any other way agreed to accept or accepted any bribe. It is conclusively established by this witness that no offense of bribery was completed, but at the most an attempt to bribe. The act must be proved in all its essential features, in all its details. No admission of the accused can ever bind the defendant under our practice. This is one point that no two minds can disagree upon. An equally important fact is that the indictment says that the defendant was not an inhabitant of or usually a resident of the State for three years before the finding of the indictment. This the State must prove. We said in the inception of this case that no one could tell what definition of inhabitant or resident the lawmaker had in his mind. On our former argument we expressed a view that inhabitant and resident has two different significations and that no one could tell for which the defendant was held. If he is an inhabitant, but not a resident the statute of limitation is a bar, and if a resident and not an inhabitant the statute is a bar. Suppose a man lives in East St. Louis. His home is there and yet he may be a usually resident by the statute. Three

years shall be a repose whether he be an inhabitant of this State or any other State. So if you give the meaning of this statute the broader significance, that Mr. Snyder is an inhabitant of Missouri the statute is an absolute bar. What has the State shown? Declarations show nothing. You may impeach a man that he made different declarations at different times, but you cannot prove an ultimate fact by admissions. There is nothing to show that the defendant was in New York except on transient business. His home was where his children were and where were they all this time? A home where the defendant often and frequently visited. Mr. Tenbroek testified that Mr. Snyder had not only his home in Kansas City, but a place of business in Kansas City. Whatever he told Dr. Woods, your honor knows how frail the human memory is. During the twenty years in which he had known Dr. Woods he had always had a residence in Kansas City. Mr. Marshall testified to the same thing, that Mr. Snyder's home was in Kansas City. The other witnesses admitted that they themselves were transients like him.

JUDGE RYAN. Unless declarations are to be admitted, I don't believe I ought to submit the case to the jury. I don't know if I shall allow a verdict to stand on these admissions or not. They are only valuable when coupled with different admissions to certain witnesses. I should like to hear you on that subject. Declarations do not prove the ultimate fact. With all these declarations we have coming from the very same witnesses there are physical facts that deny these declarations.

Mr. Priest. This case does not go to the jury upon a scintilla of evidence. And if your Honor should set the verdict aside as being against the weight of the evidence, and with that conviction in your mind, it will be your Honor's duty to acquit this man. Mr. Johns' testimony was that Mr. Snyder said his home was in New York while he had a residence in Kansas City. The only conclusion you can draw from that is that he had a home in New York and had a temporary residence in Kansas City, or that Mr. Johns had a lapse of memory in four years and that Snyder had a home in Kansas City and a temporary residence in New York. The fact is that he merely had a temporary abiding place in New York where he transacted business. Can your Honor let testimony like that stand when the physical facts contradict? Mr. Aubear said he went to Mr. Snyder with the idea of coupling Mr. Snyder, whom he thought was from Kansas City, with Kansas City affairs, but that Mr. Snyder said he lived in New York. There are limitations in the human intellect. The testimony is indefinite and is not recalled with distinction. The declarations were made under circumstances that were casual. Can your Honor say that it has been proved by the State beyond a reasonable doubt, that Mr. Snyder has not been a resident of the State? Your Honor brings to bear a trained and cultivated intellect to search out and discriminate between fact and romance. My proposition is that these declarations when coupled with denying physical facts are not sufficient to permit this to go to the jury.

Physical facts do not depend on any man's memory. They speak for themselves and cannot be broken down. We say that the accumulated facts demonstrate that Mr. Snyder owned a home in Kansas City, a home to which he returned always, and there is nothing to gainsay those facts.

Mr. Lehmann argued that admissions were only admissible when they had a tendency to corroborate the main facts. As to Mr. Snyder's residence, that must be proved by fact and not by admissions and statements of the defendant can only be used to strengthen the main testimony.

Mr. Harvey. *Mr. Lehmann* had argued that the charge of bribery must be proved by direct statements of the defendant. This we deny. The testimony is clear that Mr. Snyder was a great deal of the time in New York. When he was promoting the great street railway and he was asked where he came from, he answered: "I am from New York, the great money center of the country." Mr. Snyder married a woman in Boston and brought his wife to his residence in New York. The remark made to Dr. Woods that he lived in New York is most important—most important. If we had the statement of merely one man that he had told he lived in New York it would be sufficient to go to the jury on. The question is has the State produced enough testimony to justify your Honor in submitting the case to the jury? We believe we have.

JUDGE RYAN. I have had occasion before to consider whether or not admissions may be allowed. At that time I allowed the testimony to go to the jury and I will allow this case to go to the jury now. I do not feel that the State's case is very strong except that these admissions are quite explicit. All I have got to do is to make up my mind whether or not there is sufficient proof to allow the jury to consider it. If after the evidence is all in it may be that I will set the verdict aside should it be one of guilty. Therefore, considering the defendant's admissions I feel bound to submit this case to the jury.

THE WITNESSES FOR THE PRISONER

R. A. Long. Am in the lumber business in Kansas City; my company being the Long-Bell Lumber Co.; live at 2814 Independence boulevard, next door to defendant; have known defendant for about eight years, in Kansas City. He has been engaged in the banking business principally, and he built the gas works in Kansas City. He was president of the Mechanics' Bank and remained president until it was merged into the City Na-

tional Bank, and was then president of that. He severed his connection with that bank six or eight months ago.

Saw defendant frequently in Kansas City during the years 1898, 1899, 1900 and 1901, mostly at his home and during those years the defendant lived at 2806 Independence avenue. The house was occupied by Mr. Snyder and his family, a sister-in-law, Mrs. Richey, keeping house a part of the time, and, after de-

defendant married, his wife was added to the household. During all those years the house was kept open like my own and it was never left without either the servants or some member of the family in charge. Saw the children going to and returning from school, and they visited at my house, as did Mrs. Richey and Mrs. Snyder since her marriage. The defendant visited at my home, and I visited at the house of defendant. Saw defendant going in and out of the house frequently during all those years. Remember a reception at the Snyder house on the return of Mr. and Mrs. Snyder to their home in Kansas City in January of 1900.

Cross-examined. Saw the defendant most frequently going in or coming out of the house, sometimes saw him down town. Saw him once in New York at the Waldorf, in September, 1899. Never spoke to him about his intention of living in New York, and never had any conversation with defendant to that effect. Defendant was away from home some of the time, as I myself, who was away possibly a quarter of the time. Cannot tell just when defendant was in Kansas City and when he was away, but saw him frequently at his home in Kansas City.

J. R. Dominick. Lived in Kansas City for about sixteen years, and am in the banking business, being president of the Traders' Bank. I lived at 2724 Independence avenue, the first house west of the defendant's. Have lived there about three years, and when I moved there defendant with his family occupied the house next. The family

of defendant was composed of his sister-in-law and two or three children. Moved to the place on Independence avenue in October, 1899, and from that time to the present house next to me on the east has been occupied by defendant and his family. The only change that has taken place in the occupancy of the house is that defendant has married and his wife come in. Have known defendant about fifteen years, and during that time he has been engaged principally in the banking business. Knew him first in connection with the National Bank of Commerce, of which defendant was a director. Then he was with the Mechanics' Bank, or Mechanics' Savings Bank, and when that was merged with the City National the defendant became president of the City National Bank. During the years 1898, 1899, 1900, 1901, and 1903, have seen defendant frequently in Kansas City around the business portions of the city, in the principal places, mostly in banks, and have seen him going to and from his place of residence and passed him upon the streets of Kansas City; have seen him about his home, his house during the years named has always been occupied in the usual way of a residence, as my own house or any other house on the boulevard was occupied, and it was so occupied by defendant, his family and servants.

Cross-examined. The house was kept by Mrs. Richey, a sister-in-law of defendant and there were three children there, two small ones and one older one. Know that it was defendant's residence and that all his family lived there; that defendant own-

ed the house. Do not remember of seeing defendant in New York City. Cannot tell as to specific months in 1900 I saw defendant or not, cannot fix particular dates, but saw defendant frequently during that period.

Churchill J. White. Am seventy-seven years old and have lived in Kansas City thirty-seven years, and for thirty years was in the banking business; was connected with different banks there, and among others, the National Bank of Commerce of Kansas City. Was cashier of this bank for about twenty-eight years; have lived in Missouri sixty-five years; know defendant, and have known him for twenty-five years; have known him at Kansas City and knew him at no other place. Defendant lived in Kansas City during the last 15 or 20 years; lives there now. During the last eight or ten years defendant has been connected with the Mechanics' Bank and the Citizens National Bank of Kansas City, and was a director of the National Bank of Commerce during the time I was cashier. When the Mechanics' Bank was merged into the City National, defendant became president of it and remained in that position until about six months ago. Saw defendant in the business portion of Kansas City during the years 1898, 1899, 1900, 1901 and 1902 frequently, and had some business transactions with the Mechanics' Bank, and frequently saw defendant there during the years 1898 and 1899 and after the merger with the City National bank, saw him there. Know where defendant lives in Kansas City. Have been at his home on Inde-

pendence boulevard, near the corner of Ann street; was at his home about two years before; found him there at one time; found his housekeeper and children there at another time. Mrs. Richey was then housekeeper. Have seen the defendant in his home and going to and from his home frequently during the last five or six years. Know where defendant lived before he moved to Independence boulevard. During the years that have been mentioned saw him frequently at his place of business; do not go down town a great deal, but would almost always see him when I did go down. Am old and don't bother business people. Live four or five blocks from defendant and pass there frequently when taking a drive, and have seen defendant sitting out on his porch frequently, and have seen his family there most all of the time, and the house during all these years had been occupied all of the time. Defendant moved to Independence boulevard in the fall of 1897. His home there is a very elegant one, house is constructed of brick and is quite a large one, worth probably, house and ground, \$50,000. Defendant's home and Mr. Long's make the entire block in that place. The house has been kept up elegantly during the years 1898, 1899, 1900 and 1901. There have always been three or four servants there. Defendant owns horses and family vehicles. There has been no change in the occupation of the house since defendant and his family moved there in the fall of 1897 down to the present time. Defendant and his children have been there occupying

the house all of this time. Mrs. Richey remained there until defendant married in January, 1900, and a while after, and then Mrs. Snyder came, and she has remained there in charge of the house since that time. Defendant was a widower when he moved there.

Cross-examined. Know Mrs. Snyder remained in charge of the house because I would see her frequently when I was taking a ride; see her walking about the yard, in the door or on the porch. This is true both of Mrs. Snyder and Mrs. Richey. Saw them both in this way, would not say every day, because on bad days I would not be likely to take a ride. Mrs. Snyder came there directly after she married, which must have been about two years ago. Cannot state specifically as to the dates of seeing the defendant or Mrs. Snyder. Know that defendant was at a reception given by my niece at one time but cannot tell just when that was, but it was after defendant's marriage, and think it was in the fall of 1900. In the winter I go to California and stay about four months each time. Went to California in 1898, to Florida in 1899, to Old Mexico and California in 1900. In 1901 I didn't go anywhere. Was not in the habit of going away in the summer, but in 1901 was gone for about ten days, and in 1898 about two weeks. Am satisfied I saw defendant in Kansas City in the summer of 1899 and 1900; cannot say that I saw him in August, but would meet him repeatedly and see him go by my house. My recollection is not as good as to dates as it used to be.

R. L. Yeager. Have lived in Kansas City for thirty-five years. Am a lawyer by profession, know the defendant, and have known him for more than twenty years; knew him during these years at Kansas City, and knew him nowhere else. During all this time defendant has lived in Kansas City and have never heard of any other place of his residence. Saw defendant often during the years of 1898, 1899, 1900 and 1901 in Kansas City, at defendant's home, at my home, on the street cars and at his place of business in Kansas City. Saw him at the Mechanics' Bank and at the City National Bank. When defendant was in Kansas City I would see him. Would see him every day for the reason that the Mechanics' Bank was in what was called the New York Life building, and my office was in the building, and on going to my lunch right by the Mechanics' Bank saw him pretty nearly every day when he was there; saw him frequently indeed in that way at the Mechanics' Bank. Do not remember the various instances he was seen there at the bank. If he was in town I would see him, and very often would see defendant in my office. After the merger of the Mechanics' Bank with the City National in 1900 saw defendant in the City National Bank, but not so often as at the Mechanics' Bank, but a number of times I would go there and stop in and talk to him a few minutes. Had a good deal of business with defendant; represented him as attorney for the four years mentioned, in some matters, and in other matters had business with him. Defendant was engaged

largely outside of the banking business in brokerage, making large loans for a number of eastern money concerns, and my clients would make loans and I would pass on the titles, and I would meet defendant in that way, but to specify dates and times I could not. Have visited defendant at his home on Independence avenue; found defendant there sometimes, sometimes his sister-in-law; the three boys; saw the boys frequently as they passed on the cars. Attended the reception at the time of defendant's marriage when he brought his wife home in January or February of 1900. My wife assisted in receiving the guests. Went with my wife to Snyder's home after that, and was there several times myself and my wife was there at other times. Went there to make our party call, and found defendant and his wife and the children and family. Called once or twice, once defendant was there and once not. Found Mr. Snyder and Mrs. Richey there. Defendant kept a telephone in his residence and I have called him up a number of times and talked with him over the telephone. I was president of the school board of Kansas City for nineteen years; have been county attorney and assistant to Major Warner as United States district attorney and also have been prosecuting attorney and city counselor. In a general way have knowledge of defendant's personal presence in Kansas City during the years 1898, 1899, 1900 and 1901. Am not able to fix particular dates, except the occasion of the marriage reception, and the time when defendant was

organizing the City National Bank, as he asked me to take some stock. During the years in question I saw defendant frequently. Was for defendant in some matters and against him in some. Examined quite a number of titles for him, had litigation for him, had some against him, had consultations, advice, and things of that kind; general practice; I didn't consider defendant a regular client, but when he wanted business done he came to me and during this business intercourse never had occasion to address the defendant or see him at any other place than Kansas City.

Cross-examined. Had no occasion to address defendant elsewhere than at Kansas City, for he had an office in Kansas City and I would go to the office and talk to his brother or manager if defendant was not there, and if they wanted to reach him when he was away, they would reach him by wire. That was in regard to making releases of deeds of trust. Have been an attorney for defendant more or less for the last ten, or fifteen years. Specific dates of seeing and meeting defendant I cannot mention, but during the years in question saw defendant probably once every month or two in that time, and sometimes oftener than that. Defendant took a trip to Europe, saw him just before he went. This was in 1899. Defendant was gone somewhere about two or three months. Never communicated with defendant at the Waldorf; never saw him there. In 1900 or 1901 defendant wanted me to go on a fishing excursion with him. These are three special times of

meeting that I recall. Could make it fifty, but cannot give the dates.

George Holmes. Am city assessor of Kansas City, identify the assessment lists of 1898, 1899, 1900 and 1901 of defendant and signed by the defendant and sworn to by him.

J. W. McCurdy. Was collector of Kansas City from 1895 to March, 1899, identify the tax receipts of defendant for personal property taxes paid by defendant in the years 1898, 1899 and 1900, each of which showed defendant's residence to be on Independence avenue in Kansas City, Missouri.

Fred C. Adams. Was tax collector of Jackson county for the years 1901 and 1902, identify personal tax receipts paid in January, 1902, and showing defendant's residence on said Independence avenue.

T. A. Snider. Was deputy treasurer of Kansas City during the years 1898 and 1899; am not related to defendant. Identify tax receipts paid by defendant for 1899 in said city on his residence at 2806 Independence avenue.

John J. Green. Was city treasurer in the years 1897 and 1898 of Kansas City, identify tax receipts for his taxes paid by defendant for 1897 in which defendant's address is given as 2600 Forrest avenue, and in 1898 as 2806 Independence avenue.

R. M. Thornton. During 1899 and 1900, was a notary public in Kansas City, Missouri. Identify the incorporation papers organizing the City National Bank of Kansas City, Missouri, which were introduced in evidence and which were executed January 29,

1900, and showing the names of the directors, their places of residence and number of shares of stock held by them. The name of defendant heads the list and his place of residence given as Kansas City, Missouri.

(The oath of the directors of the City National Bank required by the statutes of the United States, was offered, showing that defendant and all of said directors, except one, who was given as residing at Topeka, Kansas, swore they were citizens of the United States and residents of Missouri.)

The record of the incorporation of the Central Traction Co., executed in March, 1898, shows that the defendant was one of the shareholders and his residence in Kansas City, Missouri.)

Twenty-three other witnesses—*E. C. White, Mrs. R. M. Snyder, Mrs. Belle Dawson, Mrs. Richey, Mrs. E. C. White, J. C. James, William J. Dingman, H. C. Crowell, L. F. Evans, Frederick B. Heath, William H. Richart, M. M. Sweetman, W. F. Cochran, William G. Ennis, William F. Richardson, Robert W. Tureman, William C. Arnold, J. C. Hill, Charles W. Mehorney, Neil Gentry, Henry A. Magill, Robert McMillan, L. B. Bailey, David A. Smart, G. H. Ruede, A. L. O. Schuler and Samuel P. Majors*, residents of Kansas City among them bankers, school teachers, merchants, mail carriers, night watchmen, his second wife, his sister-in-law, who kept his house at 2806 Independence avenue, Kansas City, after his first wife died until his marriage, January 1, 1900, his butcher, and others who knew him inti-

mately, all testified that during all the years 1898, 1899, 1900, 1901 and 1902, defendant was a resident of Kanas City; kept his home and children there and with the exception of a trip to Europe in 1900 for three months, was constantly in the city.

THE INSTRUCTIONS TO THE JURY.

JUDGE RYAN read to the jury the following instructions:

1. If you believe and find from the evidence in this case that at the city of St. Louis and State of Missouri, and on or about the third day of April, 1898, one Frederick G. Uthoff was a member of the Council of the city of St. Louis; that there was then and there pending before said council for their determination a certain proposed ordinance of said city known and designated as House Bill No. 451, by which it was proposed that said city of St. Louis should grant to the Central Traction Co. certain rights, privileges and franchises for the construction of a street railroad or railroads in said city; that the defendant then and there knew that said Uthoff was a member of said Council and that the said proposed ordinance was so pending before said Council for their determination; that the defendant then and there knowingly and corruptly devised, contrived and intended to corruptly influence the vote of the said Uthoff as a member of said council for and in favor of the passage of the said proposed ordinance by said council; that defendant then and there knowingly and corruptly gave, or caused to be given, to the said Uthoff, the sum of fifty thousand dollars or any other sum of money as a gratuity, reward or bribe to said Uthoff in pursuance of any corrupt understanding or agreement between defendant and said Uthoff that upon such payment of such sum of money said Uthoff would give his vote as a member of said Council for and in favor of the passage and enactment of said proposed ordinance by said Council, then you should find the defendant guilty of the offense of bribery as charged in the indictment: Provided that you further believe and find from the evidence that the prosecution of this indictment has not been barred by the statute of limitations as hereinafter defined and explained. And unless you so believe and find from the evidence you should acquit the defendant. If you convict the defendant of bribery as charged in the indictment, you will assess his punishment at imprisonment in the penitentiary for a term not less than two nor more than seven years.

2. If you believe and find from the evidence in this case that at the city of St. Louis and State of Missouri, and on or about the third day of April, 1898, one Frederick G. Uthoff was a member of the Council of the city of St. Louis; that there was then and there pending before said Council for their determination a certain proposed ordinance of said city known and designated as House Bill No. 451 by which it was proposed that said city of St. Louis should grant to the Central Traction Co. certain rights, privileges and franchises for the construction of a street railroad or railroads in said city, that the defendant then and there knew that said Uthoff

was a member of said Council and that said proposed ordinance was pending before said Council for their determination; that the defendant then and there knowingly and corruptly devised, contrived and intended to corruptly influence the vote of the said Uthoff, as a member of said Council, for and in favor of the passage of said proposed ordinance by said Council, that defendant then and there knowingly and corruptly gave, or caused to be given, to the said Uthoff the sum of fifty thousand dollars, or any other sum of money as a gratuity, reward and bribe to influence, persuade or induce the said Uthoff, as a member of the said Council, to vote for and in favor of the passage and enactment of the said proposed ordinance by said Council; but that the said Uthoff did not accept and receive such sum of money upon any promise, undertaking or agreement to vote for and in favor of the passage and enactment of said proposed ordinance, and made no promise, undertaking or agreement to vote for and in favor of the passage and enactment of said proposed ordinance in consideration of the said sum of money, then you should convict the defendant of the offense of attempted bribery, provided that you further believe and find from the evidence that the prosecution of this indictment has not been barred by the statute of limitations as hereinafter defined and explained. If you convict the defendant of attempted bribery you will assess his punishment at imprisonment in the penitentiary for a period not exceeding five years, or by imprisonment in the city jail for a term not exceeding one year, and a fine not less than one thousand dollars.

3. Under the statute of limitations in this state the prosecution for the offense of bribery or of attempted bribery must be commenced by the finding of an indictment for such offense within three years from the commission of such offense; the indictment in this case was found April 5, 1902. In determining whether or not three years have elapsed between the commission of an offense and the finding of an indictment therefor such time as the defendant shall not have been an inhabitant of or usually a resident within this state shall not constitute any part of such period of three years. The question of whether or not the defendant in this case has been an "inhabitant" of this state is not for your consideration. If after deducting from the time which the jury finds and believes from the evidence has elapsed between the commission by defendant of the offense of bribery, or attempted bribery, if they find and believe from the evidence under the other instruction given (Nos. 1 and 2) that either offense was committed by defendant, and the finding of the indictment April 5th, 1902, such parts of said time, if any, as the jury may find and believe from the evidence and under the other instruction given (No. 4) the defendant was not usually resident within this state, less than three years remains, then the prosecution of this case under this indictment is not barred by the Statute of Limitations.

4. If from the evidence you find and believe that the defendant after the commission of the offense charged in the indictment, or

of attempted bribery (if you find that either offense was committed by him) went to the City of New York and there engaged in business, and there occupied apartments before and after his marriage, which were engaged by the year, having them as an established abode in New York, then you may find from such facts that during the period of time he was so in New York he was not usually resident within the State of Missouri, although you may also believe and find from the evidence that he had a home in Kansas City where his children resided and to which he occasionally returned; and in this connection you may consider any statements or declarations of defendant as to his place of residence which may have been proven in evidence.

If, on the other hand, you find that he maintained his home and family, and did business in Kansas City, Missouri, and his visits to or stay in New York City, whether for business or pleasure, were merely transitory, or temporary, and that during all of the time of his visits there he kept and maintained his home and family, and place of business in Kansas City, and that his absence, at any time or times, from Kansas City was only temporary or casual in the carrying on or furthering or projecting business interests requiring his presence elsewhere, then no such absence would justify you in finding that while it continued he was not usually resident within this state and you will acquit defendant.

5. In considering this question and defense of the Statute of Limitations, the jury will consider only the evidence admitted bearing on the question of whether or not defendant has been during the times in question usually resident within this state, and if they find that the prosecution of this case is barred by limitation, then they will acquit defendant.

6. You are further instructed that you are at liberty to convict the defendant upon the uncorroborated testimony of an accomplice alone if you believe the statement as given by such accomplice in his testimony to be true, if you further believe that the state of facts sworn to by the witness (if any) will establish the guilt of the defendant. The testimony of an accomplice in the crime, that is, a person who actually commits or participates in the crime, is admissible. Yet the evidence of an accomplice in crime when not corroborated by some person or persons not implicated in the crime as to matters material to the issues, that is matters connecting the defendant with the commission of the crime charged against him, ought to be received with great caution by the jury, and the jury ought to be fully satisfied of its truth before they should convict the defendant on such testimony.

7. You are further instructed that the indictment contains the formal statement of the charge, but is not to be taken as any evidence of defendant's guilt. The law presumes the defendant to be innocent, and this presumption continues until it has been overcome by evidence which establishes his guilt to your satisfaction and beyond a reasonable doubt, and the burden of proving his guilt rests with the State. If, however, this presumption has been over-

come by the evidence and the guilt of the defendant established to a moral certainty and beyond a reasonable doubt, your duty is to convict, unless you acquit on the ground of the Statute of Limitations. If upon consideration of all the evidence, the jury has a reasonable doubt of the defendant's guilt, you should acquit; but a doubt to authorize an acquittal on that ground, ought to be a substantial doubt touching the defendant's guilt, and not a mere possibility of his innocence. You are further instructed that you are the sole judges of the credibility of the witnesses and of the weight to be given to their testimony. In determining such credibility and weight you will take into consideration the character of the witness, his or her manner on the stand, his or her interest, if any, in the result of the trial, his or her relation to or feeling towards the defendant or Frederick G. Uthoff, the probability or improbability of his or her statements, as well as the facts and circumstances given in evidence. In this connection you are further instructed that if you believe that any witness has knowingly sworn falsely to any material fact, you are at liberty to reject all or any portion of such witness' testimony.

THE SPEECHES TO THE JURY.

Mr. Bishop called attention to the seriousness of the crime and the duty of the jurors in considering facts and the law in the case. The evidence in this case must have been appalling to even you who have had certain knowledge of what has been going on. When any man approaches a legislator there begins the first step of crime and when it goes further, as it has been shown by this evidence, we begin to realize how appalling it all is. And so we find in the spring of 1898 this condition of affairs. We find men, not fighting public enterprises, but buying legislators for such things. It was in this way that the defendant comes here. He speaks of himself as an operator from the metropolis of the country, as the narrow confines were too limited for a man of his genius and ability.

It appears that in 1898 an ordinance was pending before the governing body of our city which proposed to give away rights to place tracks on the streets and run cars on them; in short, to make over to certain persons the control of every means of transportation in which every citizen is interested. Now, the legislators should weigh these things; they are to decide the advantages or disadvantages of turning over such

a valuable privilege to the applicants. They are elected to decide such matters—they may decide foolishly, they may be mistaken, but they are bound, solemnly bound, to act conscientiously. How did these legislators act in 1898? These men, clothed with this high duty, invested with this responsibility, were paid annual salaries by persons interested in preventing their affecting street railroad interests.

What do the defendant's attorneys say to this? From the presentation of the issue, there being no denial of this bribery, the question is narrowed down to whether or not the defendant has lived within the state three years. We have shown you that Mr. Snyder had changed most of his business from Kansas City to New York. We have him declaring that New York was his abiding place and that he was a New Yorker. If Mr. Snyder was in Kansas City all this time as president of a bank, why in the name of common sense did they not bring the officers of the bank here to testify that he was at his desk most of the time?

Mr. Warner. I came into this case without being permeated with the atmosphere of St. Louis, but to determine the case as you will do, by the law and the evidence.

However dense corruption may have been, however much the public officials may have betrayed their trust, the citizen is entitled to a fair and impartial trial. When you came into this box you came without prejudice. You are sworn to decide, not at the dictation or the ambition of any individual. Mr. Uthoff may be believed, but in the substance of the instructions the uncorroborated statement of a criminal unsupported, never in my thirty years' experience at the bar, has been sufficient to convict a man. Corroborated by whom? King Busch, or Kobusch. I am not familiar with names. Uthoff; Uthoff, a man who had formed a trust on boodling, who was not only willing to sell to one, but to two or three persons. Now the statute of limitations is the law of the land as is the statute of bribery. The experience of mankind has said that there should be a time when certain accusations should be outlawed. Why should the State, by insinuation, belittle that statute?

The law is that you shall consider that statute just as if you were applying it to your neighbor. I admit the difficulty of it, but hard as it may be, this question devolves on the jury. Where was the residence, where was the home of Robert M. Snyder? The home, its happiness, its virtue, is the happiness, the virtue of the nation of people. The three years is a statute of peace, a statute of rest. Here in this state was his home. His first wife died here. Here were his four boys and his sister-in-law goes into that home and cares for his boys.

Uthoff, the star witness for the State, and they ought not to be unkind to Uthoff, said Snyder told him, "I'm from New York. I'm a millionaire." Who corroborates Uthoff? Not a soul. Were Johns and Aubeare mistaken? I will venture to say that if you take any two sentences said here today no two jurors will agree as to what they were. Oh, the treachery of human memory.

On March 18, 1898, the papers of the articles of incorporation of the traction company showed that Mr. Snyder gave his residence as Kansas City. On January 29, 1900, he incorporated the City National Bank and swore that his home was Kansas City. I am not now trusting to memory, but to physical facts. On January 1, 1900, when Mr. Snyder entered for the second time the holiest and most sacred relations of life, his residence was given as Kansas City. Every particle of recorded evidence that does not depend on the memory of man shows him to be from Kansas City. But the gentlemen will say he was in New York and had rented rooms by the year. So had others and witnesses say that that was the custom. You have seen the wife go from her home in Boston to her other home in Kansas City, where her husband took her. Oh, they say, we go to the butcher, the baker, the candlestick maker. Yes, we do. We bring in the neighbor who lives across the street and next door. Who would know more than the neighbor? I will rest this case on one witness against all those who have come forward for the State, Mrs. Richey. Who should know more than the sister of Robert Snyder's dead wife, who

stepped into that house the day after her sister's death? Who should know more than the woman who became a mother of a sister's boys? Decide it, gentlemen, as free from prejudice as if it were between neighbor and neighbor. I am not quarreling with St. Louis public prejudice against hoodlums, but I do protest against the conviction of any man in violation of the constitution and the law. The state may make accusations, but around the defendant is drawn the circle of our constitution. The law presumes him to be innocent. Put your hand on your conscience and pick out the twelve or thirteen months that Mr. Snyder was in New York. I leave the fate of my client in your hands, knowing that you will deal justly with him and that the statute of peace will be for his benefit.

Mr. Lehmann. I propose to submit an issue clearly and distinctly drawn. Where was the residence of Mr. Snyder during the period of which you have heard so much? On that we have a right to have a ruling. That issue is to be concluded with just as little prejudice as if it were a civil case. Suppose the points were reversed and the State was compelled to prove Missouri, could you have had one moment's hesitation in your decision? If not, then some other influence than a dispassionate judgment influences your finding. Shirley Johns and Mr. Aubeare said that Mr. Snyder told them that his home was in New York. These newspaper men interview men every day and yet is it not probable that their memories have proved false? There is not a lawyer here, intent as they have been, who could give a correct answer to any question given today. Do you doubt that some time Mr. Snyder had his usual residence in Kansas City? If so, when did he change it? Was it when he went from store to store and bought furniture and other things? Wouldn't you accept that as the best fact to establish a home? Mr. Konta says he met Mr. Snyder in March, 1899. They went to Europe. In January they returned and Mr. Snyder was married. How much is human memory to be depended upon? Do you doubt that there was a wedding reception in Kansas City? Who told you so? Mr. Yeager, Prof. White, Mrs. White, Mrs. Richey and Mrs. Snyder.

Mr. Lehmann called attention to the many St. Louis men who had offices in New York and yet their homes were still in St. Louis. He called attention to the organization of the City National Bank and that at that time Mr. Snyder swore to his Kansas City residence. In the same way he told of the incorporation of the Economy Lamp Company. Take the character of the forty or more witnesses we have had on the stand. Suppose your residence were questioned. Not today, but three or four years hence. How would you prove your residence? These persons whom we brought here spoke after the manner of men and women who speak the truth and not so carefully that they had to weigh their words as in an apothecary's balance. Every man has the instinct of home. I want you to go home and say that you gave Mr. Snyder the same opportunity to prove his home place as you would ask for yourself.

Mr. Maroney. Major Warner said that when he came here he was not saturated with the air of St. Louis, that he hoped you would give Mr. Snyder the same justice as if he were a citizen of St. Louis. There can be no doubt as to the guilt or innocence of this man, but the only thing to be decided is the question of residence. So as we have proved his guilt of bribery, we have only to prove that for a part of this time he was a resident of New York.

Everything which was asked of Mr. Konta he answered at once, without hesitation, and he said that Snyder had been in the Waldorf-Astoria nearly all of the year mentioned, and that he had always thought him a New Yorker; that he had rented his apartments by the year. A feature of this case was suggested to me by the contention of Mr. Lehmann, that the best evidence obtainable, that of the baker, the butcher, the grocer, the lawyer, the doctor, business friends and so forth—had been brought here to testify that Mr. Snyder lived in Kansas City. "How could we prove," said Mr. Lehmann, "in a way other than we did that this man was a resident of Kansas City?" No, you know, gentlemen of the jury, that even though we live next door to a man, and though our houses are on but

a fifty-foot lot and built close together, we often do not know that our neighbor is at home. And now you have been told that Mr. Snyder lives in a large house setting far back from the street. How much more difficult, in an instance of that kind, would it be to say whether he was there or not? Now, what other evidence could they have had? Snyder was president of a bank—the Mechanics' Bank—in 1899. Why did they not bring the employes of that bank here? Why did they not bring the cashier, the clerks, all in his employ, to say whether or not their employer was actually at his place of business during the time which is so vital to this case. There were no such persons here to testify. Why not? The only men brought here were those who could not possibly know of his constant whereabouts. Not one could place a specific time, week or month when he has seen him. The only ones who testified that Mr. Snyder was in Kansas City all the time were his relatives. In judging the credibility of a witness, you must take into consideration the interest the witness had in the defendant. Whatever sympathy we may have, recollect your sworn oath to the State. Don't set a precedent that when a man lives thirteen months in New York we allow him to say he lives in Kansas City. He mustn't blow hot and cold.

Mr. Priest. You have a responsibility before you that will follow you to your grave. No man ever did a wrong through prejudice that didn't regret it until the end of time. There has been an attempt to lull you away from the facts and hurry you on by public clamor. Rupture a happy home because the prosecutor has an ambition to satisfy, but what becomes of your conscience? I have been at the bar for thirty years and I have never heard an appeal so flagrantly made to the passions. A prosecutor ought to stand as an impartial judge between the defendant and the state, and yet he has perverted and misconstrued the facts. Do not allow yourself to be swayed by passion, prejudice or public clamor, from a careful, calm consideration of the facts and the evidence because the State demands a victim, or the circuit attorney has an ambition to be gratified.

There are worse crimes than bribery; bribery is, after all, not such a serious crime. It is a conventional offense, and in many advanced communities it is regarded as a trifling offense, a mere perversion of justice. Until recently the prosecutions for this offense were directed against the bribe-takers only. But bribery at its worst is only a trifling offense compared to others. Perjury is the offense which cries aloud to high heaven and to man alike. It is a crime so foul and black that it can only be atoned for in the blood of the Son and Savior of man. Yet the State brings before you, as the sole denouncer of this defendant, a perjurer as a witness against him, a perjurer so reeking in corruption and filth by his own admissions as to be a stench in the nostrils of every honest man.

There are two branches of the issue submitted to your consideration—the crime as charged, and the statute of limitations. The bribery charged against this defendant is not supported by the evidence of one single witness save and alone Uthoff—Uthoff, the self-confessed perjurer and boodler, and double-dealer—Uthoff, the boss boodler of the country, a distinction of which he is justly proud, and of whom the circuit attorney seems equally proud. Not one credible witness is there to support his statements on the stand. To be sure, there is Kobusch. Who is Kobusch? The State has the temerity to produce as a witness in this case, to bolster up the statement of Uthoff, this man Kobusch, already under indictment in this very case, charged with perjury in the very transaction now under consideration. Uthoff is the sewer through which all the corruption and filth appears to have filtered.

Now let us consider the question of the statute of limitations in this case. The statute of limitations is not a statute of mercy. It is one of the safeguards which the law provides for the innocent. The law recognizes that the human intellect is far from perfect, and that memory is a defective and treacherous thing, and that after three years it is unsafe to depend upon the memory of witnesses to the commission of a crime. It has been proven by many reputable witnesses that the defendant had a residence in Kansas City for a period

IX. AMERICAN STATE TRIALS.

standing twenty years back. When did he change it? The change of residence alleged by the State is proven, not by facts, but by the memory of witnesses. The testimony of Konta, the State's witness, shows that the defendant's sojourn in New York was due to business, in which Konta, Greenwood and Snyder were jointly interested. The testimony of their witnesses shows that that business was transitory, and that his abiding place there was transitory. His permanent business and permanent home was in Kansas City, as shown by his physician, his minister, his banking associates and by tradesmen. Everything he held dear in life—his wife, his family, his friends, his social interests, his business, called to him and carried him back to Kansas City from New York, whenever he found a few days' leisure. In concluding I appeal to the candor, judgment and fairness of the jurors, and beseech you to weigh the facts and the evidence fairly, calmly and dispassionately, so that you might arrive at the only verdict consistent with the law and the evidence, the acquittal of the defendant.

Mr. Folk. In closing this case it is my duty to assist you in arriving at a just verdict. I have no motive to induce you to arrive at anything but the truth. I stand impartial as the prosecuting officer until I am satisfied of the man's guilt. I am here merely as a representative of the State, as you jurors represent the state. Judge Priest says that he considers bribery a trifling offense. How could the story told here on the stand be worse? Legislators sworn to do their duty sell themselves. They sell themselves to the corporate interests. Does it not bring the blush of shame to every honest man in St. Louis? Oh, yes, it is a trifling offense. Suppose all officers were corrupt and all officers could be bought, how could the government exist? If jurists and prosecuting attorneys could be purchased what would become of your property? Is it a trifling offense, I ask again? Is it trifling to sell franchises when the money goes into the palm of the plunderers and not into the city treasury? Yet Judge Priest says it is a trifling offense. It is a most infamous offense. The man who takes a

bribe is infamous and so is the giver; just as the debaucher is worse than the debauched. A bribe giver has only one thing in sight; to increase his own wealth. This man came here like a thief in the night with his tools and when he left he had the money of the people of St. Louis in his pockets.

Take the story of Uthoff. I do not apologize for him. How can the state ever prove bribery except by the man who gives or takes it? This crime lies at the very foundation of our government. Both Snyder and Uthoff are infamous, and yet the state has to do the best it can. Uthoff is not a man with whom I would associate, and yet I believe every word he said on the witness stand.

Did Snyder pay \$5,000 for a certificate of good character? Did Kobusch commit perjury? Yes. Why? Because he was with Snyder and he perjured himself in trying to protect Snyder. You ask for corroboration. You have it in the \$17,500 he paid Carroll and the \$10,000 apiece to the others. He bought up our public servants like so many cattle and then he slipped out like a thief in the night. If corporations cannot exist without bribery, it is better that they do not exist at all. I am speaking only against that kind of corporation which lives on bribery. Now you have this story of how this corrupt man came to St. Louis and took this franchise away and although he violated and trampled on our rights, now he comes and pleads the statute of limitations. That is as sacred to the State as well as to the defendants. It's where the man lives and not where the family is that concerns the criminal law. Mr. Snyder spent most of his time in New York and made it his abiding place for most of 1898, 1899, and 1900 and 1901. You can't tell what is in a man's mind except by his words and deeds. Think of it. He told Dr. W. S. Woods: "I can't afford to come back to Kansas City to live." They found a few people in Kansas City who didn't know that Snyder lived in New York and others who could never recall when they saw him in Kansas City. You can't base a verdict on such indefinite testimony as that. They ask what his business was in New York. I'll tell you. Probably buying up franchises.

Citizenship in a free country implies a civic obligation to enforce the performance of every public trust; bribery is treason, and the givers and takers of bribes are the traitors of peace; laws are made to be enforced, not to be ignored; officials should no more embezzle the public power entrusted to them than public money in their custody.

THE VERDICT AND SENTENCE.

At 8:45 p. m. the *Jury* retired, and in one hour returned into court with a verdict of guilty, fixing the punishment at five years imprisonment in the penitentiary.¹¹

¹¹ "When the jury was discharged the foreman, Mr. Wall, was asked how the members reached a verdict. He answered that every member had given his solemn pledge, on oath, that he would not disclose what took place in the jury room. It is understood, however, that the first ballot resulted in a unanimous vote of guilty and that the remainder of the time was consumed in arriving at the punishment. The majority of the members wanted to give the maximum punishment of seven years, but they came to those who thought it too severe."—*Kansas City Star*, October 5, 1902.

"Robert M. Snyder, wealthy banker and promoter of the Central Traction bill, was found guilty of bribery, the charge founded on his connection with this bill, and his punishment fixed at five years in the Penitentiary.

"The jury was out just one minute less than an hour. Arguments were concluded and the case placed in its hands at exactly 8:46 p. m. At 9:45 it announced a verdict, a way was cleared through the dense crowd which had gathered in the court-room, the jurors marched through the aisle thus made for them, and stood as the Clerk of the Court read aloud their brief statement of the result of their deliberations. Previous to this climax, for which the defendant had been waiting with all the appearance of composure he could command, the hundreds of attorneys and citizens had been chatting of the case, prophesying the result, and waiting expectantly the decision. There was much noise, the buzz of talking voices and things to disturb. But Snyder all the time remained in the one seat which he had occupied the entire day, the only symptom of anxiety being the eagerness with which he puffed at a black Havana cigar. When the knock was heard on the door of the jury-room, which communicated to the Deputy Sheriff without that the twelve jurors had agreed, all conversing ceased. Almost before Judge Ryan had declared court in session, the audience had observed the solemn silence which always precedes the determination of a man's guilt or innocence under the law.

"Snyder gripped the arms of the chair in which he sat, and looked

The verdict was set aside by the Supreme Court on June 14, 1904, on the ground that the prisoner had never lost his residence in Kansas City, Missouri. *State v. Snyder*, 182 Mo. 461. He was killed a few years later in an automobile accident.

straight in front of him. The attorneys took their seats beside him. The Judge sat erect on the bench. Every person reflected in their faces and by their attitude, intense interest, yet a deep seriousness, as they waited for the Clerk to read out the important words written upon the slip of paper, the words convicting the well dressed man, the banker, the owner of a palatial residence in Kansas City, of bribing members of the St. Louis Municipal Assembly, of purchasing their votes to secure the enactment of a measure giving him control of the street railway transportation in the city.

"An impressive moment followed the reading. If the silence was intense before, it was most intense then. All eyes turned upon the defendant, whose well-bred, elderly appearance comported harshly with a term of years in the Penitentiary, with the idea of a striped suit and the humiliation of such a position.

"But the verdict did not move Snyder to any easily discernible degree. Yet it was evident that it required all his power of self-control to becalm himself. His eyes remained fixed, looking straight ahead of him. The lines of his face, that tend to give an habitual expression of worry, deepened. His grip on the chair seemed a stronger one. He did not relax for the twenty minutes following the verdict, in which the arguments as to allowing bond were heard from opposing attorneys. His gaze was all this time directed before him, and his one attitude maintained."—*St. Louis Republic*, October 5th, 1902.

THE TRIAL OF EDWARD BUTLER FOR BRIBERY, COLUMBIA, MISSOURI, NOVEMBER, 1902.

THE NARRATIVE.

The St. Louis Sanitary Company had a valuable contract for the reduction of the garbage of that city which expired in November, 1901, and it was very desirous of obtaining a renewal. The Sanitary Company received some \$65,000 a year for garbage reduction under the old contract. The Excelsior Hauling Company had the contract from the city for hauling the garbage to the reduction works. Edward Butler* was the

* "BUTLER, EDWARD. Capitalist and politician. Born in Ireland 1838; received the rudiments of an education in Ireland; came to the United States; learned blacksmith trade in New York; came to St. Louis when a young man; married, St. Louis, November, 1860, Ellen O'Neill; eight children, three living—Edward, Jr., James J., Catherine V. Worked at trade in various shops in St. Louis and then established for self as horseshoer, first on small scale and then enlarging and afterward establishing branch shops in various parts of the city, and conducting the business with son, Edward Butler, Jr. Became active in politics, with a tact for organization which brought him into prominence in local affairs of the city. Never desired to hold office himself. Catholic. Residence, 3501 Pine Street." That is the story of Col. Ed. Butler's life as he wrote or dictated it for a book of biographies published five years ago. "Active in politics—tact for organization—never desired to hold office himself." Scant phrases; vague generalities these seem, when applied to the career of the man whose political power skilled leaders strove for two decades to overthrow; whose liberty was for two years an issue no less with the public than in the courts; and who once said, half in frankness, half boasting: "I've been stealing elections in St. Louis for 30 years."

No conditions or environments could have kept Ed. Butler subordinate or obscure. One might reckon, after the fashion of contemporary writers, that in ancient Rome he would have been the maker and adviser of tribunes and aediles, and would have known the time for gainful realty speculation thereon; just where land would have been condemned for the *Gloaca Maxima*, and which street the Coliseum was to have its main entrance on. In Gaul one can see him dickering with Julius Caesar for the contract to shoe the

owner of 185 shares of stock in the St. Louis Sanitary Company, and was largely interested in the Excelsior Hauling Company. The St. Louis Sanitary Company paid Butler a salary of \$2,500 a year in order to promote "good feeling between the Hauling Company and the Sanitary Company." In September, 1901, the Sanitary Company made a contract with the Excelsior Hauling Company whereby the Sanitary Company agreed if it secured the contract from the city for the

horses of the Tenth Legion, and getting it. In Mexico with Cortez, in Peru with Pizarro, he would have made Cacique and Inca his allies by the same tactics by which he attached the Fourth Ward "Indians" to him in St. Louis.

But though he might have done these things and many more, in other scenes and other centuries, Fate was kind to Ed. Butler in placing him in St. Louis "when a young man." About the time he began to be active in politics, to an extent that made politicians take account of him, the city charter of 1876 was adopted. With its adoption, the House of Delegates came into existence. Twenty-eight men, expected to furnish capacity and patriotism at \$25 a month! How well his plan would work in a city whose growth was opening privilege and profit in every form should have been, it would seem now, not difficult to see. One might have expected that a leader and manager would have sprang up from within the ranks of the delegates themselves. But the man who never desired to hold office himself saw a way he liked better. "What should I want to hold the office for?" he said in later life. "I always preferred to let the other fellow hold the office, and then get acquainted with him."

The getting acquainted, in the case of delegates, came before election or primary time. It came to result year after year and administration after administration, in an understanding of practical men, which made the House combine no less a commercial asset than a political force.

What the old-fashioned alderman was to his humble, hard-working and hard-voting constituents, Butler became to the alderman—an oracle, a meal ticket, a cyclone cellar. On the political side, he expanded into a city boss, influential, though not always dominant, in naming the local tickets of the Democracy, and sometimes those of the Republicans. He was beaten time and again on the face of the returns, or of the public understanding of the returns, but his influence at the City Hall was never stronger than after some of the most seemingly disastrous of these defeats. This, the political side of Butler's career, the public saw and talked about. The commercial side, equally important and closely correlated with the political, developed almost unseen. Railroads, trolley lines, lighting companies then developing their St. Louis interests, needed the complaisance or the aid of the city legislators. Butler could

reduction of garbage, after the expiration of the contract it then held, the Sanitary Company would pay the Excelsior Hauling Company \$45,000 in cash, and the further sum of \$17,000 a year for each of the three years to be covered by said contract.

On July 30, 1901, there was introduced in the Council of the Municipal Assembly of the city of St. Louis a bill providing for the protection and preservation of the public health, by the sanitary disposal of all slops, offal, vegetable and animal matter of the city, by a process known as the Merz process, and authorizing the Board of Health to advertise for bids, and award the contract to the best bidder. This bill was passed by both houses and signed by the mayor on September 17, 1901. The Board of Health thus authorized to let the contract was composed of the mayor and six others, among whom were two physicians, Dr. Albert Merrell and Dr. H. M. Chapman. On the evening of September 16, Butler called at Dr. Chapman's home and was ushered into his office and after shaking hands began to speak of the ordinance that had been passed for a new garbage contract. He said: "Our company intends to put in a bid, and we would like to get it, in fact we think it is due us. We have worked there for ten years and made no money, and the city rather owes it to us to throw it our way if possible." Dr. Chapman replied that if there was more than one bid the Board of Health would have to give it to the lowest bidder, and that if his bid was the lowest, of course he would get it. He then went on to speak of the terms

handle the legislators, and he learned to handle the men who wanted the legislators' help and favors. He learned also to connect demand and supply to his own gain. "I am no cheap man," he said years afterward, in describing the system which he there built up. "I require my fee and I get the results." His fee in one legislative coup after another was not the only source of the blacksmith-politician's profit. The street has its regards for those who know its inmost ways, and Butler knew many things of which the men of the street held, like the schoolboy's essay on Nero, the less said the better. So stock tips which were bank account builders and real estate tips which put Butler in on the earliest stage of deals determining the property values of entire neighborhoods, came his way.—*St. Louis Post-Dispatch*, September 10, 1911.

of the ordinance and said: "You know, Doctor, that in the ordinance it calls for a \$50,000 cash bond to be put up by the bidder who is successful in receiving the bid. This \$50,000 is intended to cover the faithful completion of the works. You know we have the complete works down there and therefore this cash bond will not have to stay up long, and at the time this comes down and the Board of Health signs the release and takes it down I would like to come to you, Doctor, and make you a present of \$2,500 if you will vote for our company to get this contract."

Dr. Chapman, very much surprised, replied: "Mr. Butler, I can't do that. It would be money that I could not take and spend with any satisfaction to myself, and I can't do it." He then said: "Well, Doctor, I will see you again," and shook hands and left the house.^b

About the same time Butler called on Dr. Merrell^c and made a similar offer to him in almost the same terms. On October 3d the matter, which had been pending before the Board of Health for some time, was disposed of by the award of the contract to the St. Louis Sanitary Company.

About the first of November Dr. Chapman, on entering his home about dusk, was surprised to find Edward Butler awaiting him in the same room where the former interview took place. "Good evening, Mr. Butler;" he responded, and then, peering about the room, said: "Doctor, I am a man of my word, and I am here," "Mr. Butler," the physician replied, "I thought I made it plain to you that I would not take that money." He said: "Well, you are not a millionaire." "No, I am not a millionaire, and further than that, I could use and place every penny of the money your are offering to me, but I won't take it and I can't use it." Butler got somewhat excited, and said, "Well, Doctor, you are one man in a million," and he turned and said, "I hope you won't hold it against me." "No, Mr. Butler, I suppose according to your lights it is right, but according to my lights it is wrong."

^b Dr. Chapman, *post*, p. 510.

^c Dr. Merrell, *post*, p. 514.

Replying, "If I can ever do anything for you, call on me. Good evening," he walked out of the room.⁴

When the boodle disclosures in the Municipal Assembly became public and Edward Butler's name was prominently connected with them as the Democratic "Boss" of St. Louis, the two physicians told their story to Mr. Folk and Butler was indicted by the grand jury for the attempt to bribe Dr. Chapman. He objected to being tried in St. Louis on account of the prejudice which he said existed against him in the minds of the public and the case was transferred to the city of Columbia. But the change of venue did him no good. He was convicted and sentenced to three years in the State prison.

THE TRIAL.¹

In the Circuit Court of Boone County, Columbia, Missouri, November, 1902.

HON. JOHN A. HOCKADAY,² *Judge.*

St. Louis, April 5.

On this day the grand jury of the city of St. Louis returned an indictment against Edward Butler, charging him with attempting to bribe one Dr. Henry M. Chapman, a member of the Board of Health of St. Louis, by offering him the sum of

⁴ Dr. Chapman, *post*, p. 510.

¹ *Bibliography.* "In the Supreme Court of Missouri, Division No. 2, October Term, A. D. 1903. State of Missouri, Respondent, v. Edward Butler, Appellant, No. 11842. Complete Printed Copy of the Record. A. R. Fleming Printing Co., St. Louis. Filed October 2, 1903. John R. Green, Clerk."

The St. Louis *Globe-Democrat*, *Post-Dispatch*, and *Republic*, November 11, 14, 15, 1902.

The *Columbia Tribune*, November 11, 13, 1902.

The *Columbia Herald*, October 17, November 14, 1902.

Missouri Supreme Court Reports, Vol. 178. E. W. Stephens, Columbia, Mo., 1904.

And see *ante*, p. 419.

² HOCKADAY, JOHN AUGUSTUS. (1837-1903.) Born Callaway County. Educated Westminster College. Admitted to Missouri Bar, 1859. City Attorney (Fulton), 1860; County Attorney, 1864. State Senator, 1866, 1878. Attorney General, 1874-1878. Judge Circuit Court, 1890-1903.

\$2,500, if he would vote as a member of that board to accept the bid of the St. Louis Sanitary Company for the reduction of the garbage of the city.³

³ "The grand jurors of the State of Missouri, within and for the city of St. Louis, now here in court duly impanelled, sworn and charged, upon their oath present: that on (or about) the twenty-ninth day of September in the year one thousand nine hundred and one the city of St. Louis aforesaid was a municipal corporation of and in the said State of Missouri. That by the provisions of its charter the legislative power of said city was vested in a Council and a House of Delegates, styled the Municipal Assembly of the city of St. Louis, and that every ordinance passed by a majority vote of the members of said Council and said House of Delegates (respectively), and approved by the Mayor of said city, became and was an ordinance and law of said city ten days after said approval, unless an emergency was declared to exist by a two-thirds vote of the members of said Council and House of Delegates (respectively), in which event such ordinance became and was a law of said city from and after the date of such approval by said Mayor. That on the day and year aforesaid there was an ordinance and law of said city which had been theretofore duly passed by a majority vote of the members of said Council and of said House of Delegates respectively (so constituting the Municipal Assembly of said city as aforesaid), known and designated as city ordinance number 20476, entitled An ordinance for the protection and preservation of the public health by providing for the sanitary removal of all slops, offal, garbage, vegetable matter and animal matter of the city of St. Louis, by a process known as the Merz process, wherein it was ordained by the said Municipal Assembly of said city (among other things) that the Board of Health of said city was thereby authorized and directed by a vote of a majority of its members to provide for and enter into a contract for the sanitary disposal of all slops, offal, garbage, vegetable matter and animal matter of the said city by the Merz process; that said contract should be let within fifteen days from the approval of said ordinance; that within fifteen days from the approval of said ordinance the said Board of Health should (under the supervision of the register of said city) cause to be inserted for five days, in the newspapers doing the city printing, an advertisement asking for sealed proposals for the disposal of all slops, offal, garbage, vegetable matter and animal matter of said city by the Merz process (in accordance with the provisions of said ordinance); that the contract aforesaid should be awarded by the said Board of Health to the best bidder therefor, and that the said Board of Health should have the right to reject any and all bids. That in the body of said ordinance an emergency was expressed and declared to exist, and that the said Municipal Assembly, by a vote of two-thirds of all the members elected to each house thereof, directed that said ordinance take effect and be in force from and after its approval by the Mayor of said city on the

St. Louis, May 19.

Edward Butler, by his counsel applied to the St. Louis court for a change of venue to some other place, "because the minds of the inhabitants of the city of St. Louis are so prejudiced against the defendant that a fair trial cannot be given him." The prisoner filed an affidavit that "the public mind has been improperly inflamed against him by editorials, car-

17th day of September, A. D. 1901, and that said ordinance then and thereafter (under the provisions of the charter of said city as aforesaid) became and was a law of said city of St. Louis. That by the provisions of the charter of said city, there had been created and was existing at the time of the passage and approval of the said ordinance and thereafter, a Board of Health of said city of St. Louis, consisting of the Mayor aforesaid, the presiding officer of the aforesaid Council, a commissioner of police of said city, an officer denominated the health commissioner, and two regular practicing physicians; and it was provided by ordinance of said city that the two regular practicing physicians aforesaid should be appointed by the Mayor of said city and such appointment confirmed by a two-thirds vote of the Council aforesaid. That pursuant to the provisions of the ordinance and law aforesaid, numbered 20476, and approved September 17, A. D. 1901, and within fifteen days after the approval of the said ordinance as aforesaid, to-wit, on the 23d day of September, A. D. 1901, the said Board of Health did (under the supervision of the register of said city) cause to be inserted for five days, in the newspapers doing the city printing, an advertisement asking for sealed proposals for the disposal of all slops, offal, garbage, vegetable matter and animal matter of said city by the Merz process (in accordance with the provisions of said ordinance and law), and setting forth that such sealed proposals would be received at the office of said Board of Health in said city on Tuesday, the first day of October, A. D. 1901, at four o'clock in the afternoon of that day, at which time such sealed proposals would be publicly opened and read. That at the time of the passage and approval of the said ordinance numbered 20476, and for a long time prior thereto, and thereafter at the said city of St. Louis, one Henry M. Chapman was a regular practicing physician and a member of the Board of Health aforesaid, duly appointed, confirmed and qualified, and was then and there a public officer of the said city of St. Louis; that under the provisions of the aforesaid ordinance and law of said city, numbered 20476, the said Henry M. Chapman, as a member of said Board of Health and in his official capacity and character as such member, was authorized, empowered, directed and required to give his vote, opinion, judgment and decision upon any question, matter and proceeding which might by law (and under the provisions of the said ordinance) be brought before the said Board of Health, and before him, the said Henry M.

toons, sermons and miscellaneous articles, published in the daily newspapers of said city of St. Louis for the purpose of preventing him from securing a fair trial in said city; that said editorials, cartoons, sermons and miscellaneous articles were published in the *Globe-Democrat*, *Republic*, *Post-Dispatch*, *Star* and *Chronicle*, and said articles by declaring directly and by inuendo that defendant was the Boss Boodler

Chapman in his said official capacity and character as a member of said Board of Health, and particularly upon the question, matter and proceeding of examining and considering such sealed proposals as might under said ordinances and law be made and submitted to said Board of Health for the sanitary disposal of all slops, offal, garbage, vegetable matter and animal matter of said city by the Merz process, and to give his said vote, opinion, judgment and decision in the premises either to award the contract provided for by the said ordinance and law to the best bidder therefor or to reject any and all bids therefor, as aforesaid. That at the said city of St. Louis, and on (or about) the twenty-ninth day of September in the year one thousand nine hundred and one aforesaid, one Edward Butler, well knowing the premises, and then and there well knowing that the said Henry M. Chapman was then and there a member of the said Board of Health and a public officer as aforesaid, and then and there unlawfully, corruptly and feloniously devising, contriving and intending to corruptly influence the vote, opinion, judgment and decision of the said Henry M. Chapman (in his said official capacity and character as a member of the said Board of Health and as a public officer as aforesaid) upon a question, matter, cause, and proceeding which might by law be brought before him, the said Henry M. Chapman, in his official capacity and character as aforesaid, did then and there unlawfully, corruptly and feloniously offer and attempt to bribe him, the said Henry M. Chapman, public officer as aforesaid; and in such offer and attempt to bribe, he, the said Edward Butler (then and there well knowing the premises as aforesaid, and then and there well knowing that the said Henry M. Chapman was then and there a member of the said Board of Health and a public officer as aforesaid), did then and there unlawfully, corruptly and feloniously propose and offer to give him, the said Henry M. Chapman, public officer as aforesaid, a large sum of money, to-wit, the sum of twenty-five hundred dollars, as a bribe and inducement to him, the said Henry M. Chapman, public officer as aforesaid, that he, the said Henry M. Chapman, in his official capacity and character as a member of the said Board of Health, as aforesaid, should and would give his vote, opinion, judgment and decision in favor of awarding the contract provided for in the said ordinance and law numbered 20476, to the St. Louis Sanitary Company (a corporation), which said St. Louis Sanitary Company (a corporation) as

have caused the minds of the inhabitants of St. Louis to become so prejudiced against him that a fair trial cannot be had in said city."

Howard A. Blossom, Joseph V. Martin and Stephen Peck, all citizens of St. Louis, made affidavits to the same effect.

St. Louis, June 9.

JUDGE O'NEILL RYAN,⁴ of the Circuit Court of the City of St. Louis, ordered that the cause be removed to the Circuit Court of Boone County, it not being alleged that prejudice against the Prisoner exists in said county of Boone.

Columbia, Boone County, October 13.

The trial of Edward Butler on an indictment for bribery found by the grand jury of St. Louis and removed here for trial began today.

Joseph W. Folk,⁵ Circuit Attorney of St. Louis; *Orrick C. Bishop*,⁶ *A. C. Maroney*,⁷ *Squire Turner*,⁸ and *Jerre H. Murry*,⁹ Prosecuting Attorney of Boone County, for the State.

Charles P. Johnson,¹⁰ *Chester H. Krum*,¹¹ *Thomas J. Rowe*,¹² *W. M. Williams*,¹³ *A. H. Waller*,¹⁴ *N. T. Gentry*,¹⁵ and *Wellington Gordon*,¹⁶ for the Prisoner.

aforesaid, was then and there (as averred by him, the said Edward Butler) about to make, deliver and submit to the said Board of Health a sealed proposal and bid for the sanitary disposal of all slops, garbage, vegetable matter and animal matter of said city of St. Louis by the Merz process (in accordance with the provisions of the ordinance aforesaid), pursuant to the advertisement aforesaid; contrary to the form of the statute in such case made and provided and against the peace and dignity of the State."

⁴ See *ante*, p. 419.

⁵ See *ante*, p. 341.

⁶ See *ante*, p. 342.

⁷ See *ante*, p. 341.

⁸ TURNER, SQUIRE. (1834-1906.) Admitted to Kentucky Bar, 1858. Began practice in Columbia, Mo., 1860. Representative in State Legislature. Curator State University, 1874-1876.

⁹ MURRY, JERRE HERBERT. (1868-1904). Born Boone County. Graduated University of Missouri, LL.B., 1893. Prosecuting Attorney Boone County, 1900-1904.

¹⁰ JOHNSON, CHARLES PHILIP. Born Lebanon, Ill., 1836. Grad-

Mr. Gentry said that the defense wished to file a demurrer to the indictment, which he read as follows:

First. The indictment alleges, that by virtue of Ordinance 20476, of the city of St. Louis, Henry M. Chapman would be required as a member of the St. Louis Board of Health to vote, or pass upon any matter which might be brought before said Board by virtue of said ordinance, but the indictment shows that such matter of inquiry could not by law, be brought before the said Board in that the ordinance was and is void, because it is not alleged to have been recommended, or proposed by the Board of Public Improvements and accompanied by an estimate of cost; it having been an ordinance relating to public work, which under the charter, is required to have had such origin, or recommendation and accompaniment.

Secondly. The indictment depends upon the validity of an ordinance, which undertook to vest the Board of Health with power to contract with reference to public work, and the said ordinance being void for want of authority in the Municipal Assembly to pass any ordinance for such purpose, the matter of passing upon bids for removing garbage was not one which could by law be brought

nated McKendree College, 1855. Admitted to St. Louis Bar, 1857. City Attorney (St. Louis), 1859. Member Missouri Legislature, 1862-1865, 1881. Circuit Attorney, 1866-1872. Lieutenant Governor of Missouri, 1872-1874.

¹¹ KRUM, CHESTER HARDING. Born Alton, Ill., 1840. Graduated Washington Univ., 1863; Harvard (LL.B.), 1865. Admitted to Bar, 1864. United States District Attorney (St. Louis), 1869. Judge of Circuit Court, 1870. Resigned 1875 and resumed practice in city of St. Louis.

¹² See *ante*, p. 422.

¹³ WILLIAMS, WILLIAM MUTR. (1850-1916.) Born and died in Boonville, Mo. Educated at Kemper Military Academy. Studied law at Boonville and was admitted to the Bar in 1873. Practiced law in his native city and in St. Louis until his death and became one of the leaders of the Bar of the State. Judge Supreme Court, 1898-1900. President Missouri Bar Association, 1903. LL.D. Westminster College.

¹⁴ WALLER, ALEXANDER H. Born Carroll County, Ky., 1845. Removed with parents to Missouri in 1885, who settled in Clay County. Educated in common schools. Prosecuting Attorney (Randolph County), 1878-1881. Mayor (Moberly), 1889-1891. Judge Circuit Court, 1903-1912.

¹⁵ GENTRY, NORTH TODD. Born Columbia, Mo., 1866. Graduated Univ. of Missouri. Admitted to Bar, 1888. City Attorney (Columbia), 1890. Assistant Attorney General (Missouri), 1905-1908.

¹⁶ GORDON WELLINGTON. (1834-1908.) Born and died in Columbia, Mo. Prosecuting Attorney, and practiced law in Columbia for many years.

before the Board of Health for any action, vote, or decision of its members.

Thirdly. The indictment shows that the ordinance was void, because it merely evidenced an attempt to delegate to the Board of Health the legislative powers of the Municipal Assembly, and to vest the said Board with unauthorized functions, and the ordinance having been void, there was nothing covered by its subject-matter, which could be, by law, brought before the Board of Health for action on the part of any of its members.

Fourthly. The indictment does not allege that the contract sought to be authorized by the ordinance was to be made for and in the name of the city of St. Louis, but merely shows a contract to be made by the Board of Health in their own behalf.

Fifthly. The indictment does not allege that either the St. Louis Sanitary Company, or any other concern had in contemplation a bid, or was about to bid upon the disposal of garbage by the Merz process, but merely alleges that the defendant so averred, it not even being alleged that the defendant so averred to the officer whom it is asserted he unlawfully approached. Hence the indictment does not show that there was any possibility of the Sanitary Company making a bid.

Sixthly. The indictment is repugnant and insensible and does not state facts sufficient to constitute an offense under the laws of this State.

October 14.

Mr. Krum opened the argument on the demurrer and was followed by *Mr. Folk* and *Mr. Bishop* for the State and by *Mr. Waller* and *Mr. Williams* for the defense. The COURT said that the decision would be rendered in the morning.

October 15.

JUDGE HOCKADAY. The demurrer in this case assails the indictment upon six specific points. These objections will be considered in their inverse order. The sixth point contains the general averment that the indictment is repugnant and fails to state facts sufficient to constitute any offense. My conclusion on this objection is that the indictment is sufficient in form and contains all the necessary averments to constitute the offense under the statute and is sufficient to fully inform the defendant of the crime with which he stands charged. This is all the law requires to constitute a good indictment.

The fifth objection is not well taken for the reason that the clause assailed does not bear the construction that the demurrer attempts to give it.

The fourth objection is overruled for the reason that it is clearly implied by the terms of the ordinance quoted in the indictment that the contract in question was to be made for and in behalf of the city of St. Louis. No other construction could be put upon it.

The third objection cannot be entertained for the reason that there is nothing in the parts of the ordinance referred to in the indictment that can be by any kind of reasonable interpretation

construed as an attempt to delegate to the Board of Health any of the legislative powers of the Municipal Assembly or that any such powers were delegated to the Board of Health, but that all powers given the Board under the ordinance can only be construed as ministerial and administrative.

The first and second objections to the indictment will be considered together as they involve the only serious question in the case. Under these objections the ordinance partially pleaded in the indictment is claimed in the demurrer, and strenuously contended for in the argument to be inoperative and void.

The entire ordinance was not produced or read during the consideration of the demurrer, and I am forced to pass upon its validity from the fragmentary portions of it quoted in the indictment. The position of the defendant is that there was no charter power in the Municipal Assembly to enact an ordinance authorizing the Board of Health to make the contract contemplated by the ordinance. It is claimed that by section 27, page 298, of the charter the sole and exclusive power to make such a contract is lodged in the Board of Public Improvements.

In order to determine this question it became necessary to review the various provisions of the charter and consider the instrument as a whole, in order to arrive at the legislative intent in the creation of its several departments and the powers and duties sought to be conferred upon each of those departments.

Besides various other departments under the charter, there are two boards created representing two of the most important interests in the city government—the Board of Public Improvements, and the Board of Health. One representing the business department of the city government and the other coming more properly under its police power. The Board of Public Improvements consists of the street commissioner, sewer commissioner, water commissioner, and park commissioner and wharf commissioner. This Board under the charter, has charge of all the public works and improvements of the city. In the several departments of the commissioners constituting the Board they have only an incidental, but no direct connection with the health department. The purposes and duties of the two are entirely distinct and their knowledge of the conditions, want and necessities of each other can only be general and incidental. The duties of the commissioners composing the Board of Public Improvements are all in connection with the public works and improvements of the city and those duties are clearly defined and limited by the charter. It certainly was not the purpose of the Legislature to blend the duties and responsibilities of these departments with those of the health department. The aims and purposes of the two departments are entirely foreign and distinct. Therefore with these distinctive features in these two Boards, the question arises what kind of work was contemplated in section 27, in which the exclusive right was conferred upon the Board of Public Improvements. Was it all work of the city of every character or was it simply the work of the several

departments designated in the charter as "the Public Works and Improvements of the City?"

The reasonable and practical solution of the question, it seems would be, that they could contract only for the work embraced in their respective departments. With these they would be familiar. The value and necessity of such work would come under their daily observation, and they would be specially adapted to contract for such work. But to hold that they should be the sole contracting power for the city and that every other department should be turned over to them, would not only be cumbersome but wholly impracticable and unreasonable. Under such a construction, every other department of the city would lose its identity, and the whole would be subordinated to and merged in the Board of Public Improvements. But it is contended in argument that under the ruling of the State *ex rel.* v. City of St. Louis, 161 Mo., p. 371, that the cleaning of the streets being held to be public work within the meaning of section 27 of the charter (before referred to), that therefore the disposal of garbage under the supervision of the Board of Health, is likewise public work which can only be contracted for by the Board of Public Improvements.

This decision might be a serious barrier in this case, were it not that the repairing and cleaning of streets by special provision of the charter are imposed upon the street commission (section 17 article 6), under the supervision of the Board of Public Improvements. But there is no such provision as to disposal of the garbage of the city, hence, I conclude that, that decision in no respect militates against the view taken in the present case.

But it is further contended that the indictment must upon its face show that the ordinance authorizing the garbage contract was a valid law of the city. This contention involves the inquiry as to what extent the indictment pleads the ordinance, and whether it contains a sufficient recital of its provisions to sufficiently charge the offense. We have already determined that its averments were sufficient, to charge the offense, and unless there is something appearing upon the face of the indictment to show that the ordinance is void, the indictment must still be held as sufficient.

The indictment after reciting the enacting clause of the ordinance, contains the following part of its provisions: "That the Board of Health are authorized by vote of a majority of its members to enter into a contract for the sanitary disposal of all slops, offal, garbage, vegetable matter and animal matter of the city by the Merz process; that said contract should be let within thirty days after the approval of the ordinance after advertising the same five days in the papers doing the city printing, and that said contract be awarded to the best bidder, with the right of the Board to reject any and all bids, it would be observed that there is nothing in the provisions of the ordinance quoted necessarily indicating any expenditure of public money under the contract.

The contract was to be let to the best bidder and not to the low-

est bidder. Under the ordinance so far quoted, the Board might have contracted for the disposal of the city garbage, at a sum to be paid to the city, by the contractor or they might have agreed to give the contractor the garbage for disposing of it, in neither of which cases would there be involved any outlay of public money or be letting of any public work. If they were to be limited in their contract to let it to the lowest bidder, then it would have necessarily have implied an outlay of public money. Had this ordinance provided for the letting of the contract by the Board of Public Works, they could not under section 27 let the contract to the best bidder, as this section provides expressly that all contract shall be let to the lowest bidder, under this section the outlay of public money is in all cases contemplated. It is based upon the performance of public work under estimates to be submitted, for which the city must pay. But a sale of the city's garbage for disposal or consumption, involves no outlay of money and is in contemplation of the charter not public work for which the Board of Public Improvements is required to contract. But it is earnestly contended that the Board of Health has no power to make any character of contract. That they are an impotent body with no power to act themselves or to employ others to act. By some reference to the provisions of the charter I think a different conclusion may be reached.

Under the miscellaneous provisions of the charter section 7, page 308, it is clearly provided that where no other officer or agent is authorized to contract for the city by existing law or ordinance, the same shall be made by the controller, thus clearly showing that the Board of Public Improvements are not the only officers with power to contract for the city, but that the Assembly may authorize other parties to make such contracts by ordinance, and in case of omission to do so, the controller can exercise such authority.

This provision, it seems, ought to settle the question of the authority of the Board of Health to make the contract in question. But the right of the Municipal Assembly to authorize the making of such contract may well be based upon more broad and liberal grounds than those already mentioned.

The charter in defining the power of the Municipal Assembly to enact ordinance (in section 6, page 217), uses this language, "to prevent the introduction of and spread of contagious diseases, to establish and regulate hospitals, and to secure the general health of the inhabitants, by any measure necessary."

And again, under the general welfare clause (section 14), the following language is used, "to pass all ordinances not inconsistent with the charter or laws of the State as may be expedient in maintaining the peace, good government, health and welfare of the city." The authority of the legislative branch of the government, both state and municipal, in the exercise of the police power, is very broad and very liberal. The measure of such authority may be very safely based upon the exigencies of the case. The law esteems maintenance of the public peace, the public safety and the

public health of infinitely greater value to the citizens than any or all other public interests combined.

Much has been said about expressed and implied power under the charter. Can it be contended that there are no implied powers under organic law? Almost the entire police powers of municipalities are granted under the general welfare clause, where general terms are almost exclusively used, and special subjects rarely combined.

I find no expressed authority under the charter of the city of St. Louis to prevent the carrying of concealed weapons, or to punish a case of assault and battery, yet no one doubts its authority to pass such ordinances under the general provisions of the charter for the maintenance of the public peace and general welfare of the people. Can it be that the public health provisions of the charter invest no implied powers in the municipal assembly for the protection of the health of its citizens?

It has been insisted in argument, with much earnestness, that no presumption can be indulged in favor of the validity of a city ordinance. I do not understand such to be the law. The legal presumption is that all legislative enactments are valid and constitutional, municipal as well as state, nor do I understand the rule to be, which has also been insisted upon in argument, that in determining the validity of a city ordinance, that the doubts should be solved against the ordinance in either a civil or criminal case. The interference of the courts with the enactment of the co-ordinate branch of the government is a delicate power, and one ordinarily exercised with great caution. While such power is conceded, it has always been the policy of the courts to exercise it sparingly, and never by its edicts, to invalidate a law regularly passed and approved, unless there is reasonable certainty that it is in open conflict with the organic law; or as Judge Burgess puts it in the case of *Cunningham v. Current River Railroad Co.*, 165 Mo. 277, the judicial mind should be satisfied of the invalidity of the act beyond a reasonable doubt. Accepting this as the safe and correct rule I must rule so far as the ordinance in question appears in the indictment, sustain its validity.

As to the other question raised by the State that the defendant is estopped in this case from pleading the invalidity of the ordinance, I make no ruling, although quite a current of authority sustains that position.

The demurrer to the indictment is overruled in each case.

Mr. Gentry moved for a continuance of the case because a very important witness for the defense, John McCarthy, of St. Louis, was absent, although they had used their best efforts to obtain his attendance.

Mr. Folk opposed the motion.

JUDGE HOCKADAY ruled that the presence of the witness was material and that sufficient diligence had been shown by the defense. In justice to all he would continue the case, but not to the

next term. He would adjourn the hearing to the second Monday in November.

November 10.

The trial was resumed today.

The Clerk called the names of the special venire that had been summoned as follows: W. A. Bright, John S. Bedford, M. F. Glenn, Robert F. Hulett, S. E. Lenoir, Capt. J. H. H. Maxwell, Larkin D. Shobe, A. J. Estes, T. H. Hickman, J. L. Harris, Nathan King, Tiford H. Murray, W. C. Sutton, James T. Gibbs, Michael Bright, C. B. Rollins, John F. Wilhite, M. A. Turner, B. J. Brown, L. P. Jones, R. L. Hope, Thomas P. Brown, Benjamin H. McKimpson, Wm. H. Cochran, J. W. Read, Walker Dorsey, C. S. Ballew, F. H. Shields, James M. Batterton, Thomas Robnett, Benjamin Glenn, Virgil Potts, James C. Jones, Perry Turner, R. E. Thurston, W. H. Thompson, Gentry Clark, M. B. Bullard, J. L. Skaggs and Frank H. Traugher.

The State challenged W. A. Bright, A. J. Estes, J. L. Harris and B. J. Brown. The defense struck off Robert F. Hulett, S. E. Lenoir, Capt. J. H. H. Maxwell, L. D. Shobe, Nathan King, C. B. Rollins, R. L. Hope and J. W. Read. At the end the jury was composed of John S. Bedford, M. F. Glenn, T. H. Hickman, Tilford Murry, W. C. Sutton, J. F. Gibbs, Michael Bright, John F. Wilhite, L. P. Jones, Thomas P. Brown, Benjamin H. McKimpson and William Cochran.¹⁷

Mr. Folk read to the jury the formal indictment and then stated to them what the State expected to prove against the prisoner. He said that the city of St. Louis, in order to insure better sanitation had provided that all garbage and refuse matter which naturally accumulates in a city be removed and destroyed by a process called the "Merz" process, and that bids were received for the removal of this garbage by

¹⁷ All but Thomas P. Brown, who is a merchant, are farmers. Curtis B. Rollins was the only Republican summoned and was rejected by the defense. He is a member of the old and wealthy Rollins family here. He had formed an opinion of the guilt or innocence of the defendant from what he had read of the case in the newspapers, he said. William H. Cochran, who had formed an opinion in the same manner told the Court he could give the case an impartial trial and he was retained. Mr. Cochran is the only resident of the city of Columbia on the jury. He was foreman of the last grand jury, which made quite a stir here. S. E. Lenoir, who was challenged, said he had formed an opinion which would require evidence to change. *St. Louis Globe-Democrat*, November 11, 1902.

the Board of Health. Those bids were to be received on or before October 1, 1901, Dr. Chapman was a member of the Board of Health who had power to vote upon the bids submitted to the Board of Health for the removal of said garbage. The prisoner was one of the owners of a company which did hauling, called the Sanitary Company, and this company had sent a bid covering the removal of the garbage for a certain period of time; that he (Edward Butler) had before the time set for the action of the Board of Health upon the bids, called upon Dr. Chapman at his home, had gone to the door, rung the bell and inquired for Dr. Chapman. On being told that he was not at home, he had gone away, but had returned on the same day and saw Dr. Chapman in his private study, and had offered to give him \$2,500 if he would vote for the acceptance of the bid by the Sanitary Company. Dr. Chapman positively refused, saying that this would be bribery and that Mr. Butler's company would get the contract if their bid should be the lowest. Mr. Butler said that he did not mean a bribe, but that he only wanted to make Mr. Chapman a present of the \$2,500. Dr. Chapman again refused the money and Mr. Butler departed, returning again some days later with the money and tendered it to Dr. Chapman, which he positively refused, after which Mr. Butler left him; also that the defendant had gone to Dr. Albert Merrell, a member of the Board of Health and had offered him the same amount of money at two different times and been refused in the same way, and that Mr. Butler had tried to force the money upon him, but was emphatically refused.

THE EVIDENCE FOR THE STATE.

Geo. F. Mockler. Am secretary of the St. Louis City Council. I read minutes of various Council meetings and the action taken pertaining to the passage of the bill providing for the removal of the slops and garbage.

The original bid was offered, documents and official records

were read in order to determine all the particulars as to dates and the votes upon the passage of the bill in question. Bill No. 71 was offered in evidence, was objected to by defense, but objection was overruled. An ordinance was also introduced which was objected to by defense because it had

not been passed by a majority of members. The objection was overruled by the JUDGE. This ordinance which was entitled one for the protection and preservation and protection of the public health provided for the sanitary disposal of all slops, garbage, vegetable matter and animal matter by a process known as the "Merz" process. It was passed by both houses and signed by President Hornsby on September 11, 1901, was sent to the Mayor, Rolla Wells, and approved by him on September 17th. Dr. Chapman, the records show, was confirmed as a member of the Board of Health on April 28, 1899. Dr. Merrill was confirmed as a member on May 2, 1899. Both men were appointed by the former Mayor, Henry Ziegenhein.

Joseph N. Judge. Am clerk of the St. Louis House of Delegates, since April, 1901; Council bill No. 71 as shown by the records in my custody was passed by a vote of 20 to 2 and the emergency clause by 21 to 1, on August 16, 1901. There was a disagreement between the House and the Council and a conference committee appointed whose report was adopted by 27 to none, and it was signed by the speaker on September 11th.

Patrick R. Fitzgibbon. Have been Register of St. Louis since 1901; have the records of the appointments and oaths of office of members of the Board of Health.

Dr. Chapman took the oath on April 25, 1899, and Dr. Merrell on May 4; have also the record of the publication of the advertisement and bids under the garbage ordinance, let by the Board of Health.

Mar Kauffman. Am clerk of the Board of Health; sealed proposals for the disposition of garbage under the Merz process were duly advertised for as my records show. A bid was opened at the meeting of the Board on October 1st, 1901, from the St. Louis Sanitary Co.; Dr. Chapman moved that the consideration be laid over until October 3rd, which was carried and on the afternoon in executive session the contract was awarded to that company by a unanimous vote. The members present were Drs. Starkloff, Chapman and Merrell. Mr. Blong and Mayor Wells.

Walter J. Blakely. Am Secretary of the St. Louis Sanitary Co., Charles F. Herman is President; Mr. Butler has no connection with it except that he is a stockholder; he owned 185 shares in October, 1899. We put up a deposit of \$50,000 with the bid. In October, 1901, Edward Butler was receiving \$2,500 a year from the Sanitary Company; it was for good will and services; we wanted good feeling between the Sanitary Company and the Excelsior Hauling Co. There was an agreement between them as to the bid. I have it here.

Mr. Krum objected to the reading of the contract.

Mr. Folk insisted that it was admissible.

JUDGE HOCKADAY. I will allow it for the purpose of showing Butler's interest in the contract let to the Sanitary Company.

Mr. Folk read the contract, which was dated September 30, 1901, and it provided that if the Sanitary Company secured the contract

from the city for the reduction of garbage after the expiration of the contracts it then held it would pay to the Excelsior Hauling Co. \$45,000 in cash and \$17,000 a year for each of the three years covered by its contract.

Edward Dierkes. Am deputy auditor of St. Louis; have been since June, 1891; I have the custody of the warrants, for money paid out by the city. Have warrants in my possession in favor of the Excelsior Hauling Co.

Mr. Krum. We object to this as irrelevant to the charge.

Mr. Folk. We propose to show that the prisoner signed these warrants.

The Court. I think it is admissible.

Dierkes. Here is one dated October 30, 1901, for \$10,000 signed Excelsior Hauling & Transfer, signed Edward Butler, Vice President, and there are several others for smaller sums. Under the new contract the Sanitary Company receives \$130,000 a year; under its old contract it received about \$65,000.

Dr. Henry N. Chapman. Am a physician; my office is in my house, No. 1538 Mississippi avenue, St. Louis. Attended the medical college here in Columbia. Have been for nearly four years a member of the City Board of Health; know the prisoner; saw him on the 16th or 17th of last November at my office in my house about twilight—seven or eight o'clock in the evening.

Mr. Butler was in the front room of my place, the front office when I was sent in. Did not open the door; he came in, some one let him in and I followed into the room after him. We shook hands, and he began to speak about the Garbage Reduction Works in South St. Louis,

telling me what a very fine place it was, all of which I appreciated, for I had seen it, and he told me of the great expense that the Sanitary Company had been put to in fitting up these works, and how it was the most complete works in the United States, and how perfectly they were ready to take and handle any amount of garbage, and he then went on to speak of the ordinance that had been passed for a new garbage contract. He said "our company intends to put in a bid, and we would like to get it," he said. "In fact we think it is due us. We have worked there for ten years and made no money, and the city rather owes it to us to throw it our way if possible." I said to him that if there was more than one bid the Board of Health would be compelled to give it to the lowest bidder and that if he was the lowest bidder—if his bid was the lowest, of course he would get it. He then went on to speak of the terms of the ordinance and he said: "You know, Doctor, that in the ordinance it calls for a \$50,000 cash bond to be put up by the bidder, who is successful in receiving the bid. You know," he said, "this \$50,000 is intended to cover the faithful completion of the works," he said. "You know we have the complete works down there and therefore this cash bond will not have to stay up very long, and at the time this comes down and the Board of Health signs the release and takes it down I would like to

come to you, Doctor, and make you a present of twenty-five hundred dollars if you will vote for our Company to get this contract."

I said "Mr. Butler, I can't do that. It would not be money that I could take and spend with any satisfaction to myself, and I can't do it." He then said, "Well, Doctor, I will see you again," and shook hands with me and left the house. Think this occurred on 16th September. Next saw him about the first of November the same year about six in the evening; was told a gentleman wanted to see me and went into my office, the same room in which the previous interview occurred. When I went into the room Mr. Butler was standing in a dim light. There was no light in the house, but in front of my house is a gas lamp which reflects distinctly into the office and shows up fairly a good deal of light, enough to recognize people in the room. When I stepped in he was standing close to the folding door that separated the two rooms. I walked up and said, "Good evening, Mr. Butler." He responded and then peered about the room, and said to me, "Doctor, I am a man of my word, and I am here. "Mr. Butler, I thought I made it plain to you that I would not take that money." He said, "Well, Doctor, you are not a millionaire," and I said, "No, I am not a millionaire, and further than that, I could use and place every penny of the money you are offering to me, but I won't take it, and I can't use it." He then appeared to get somewhat excited, and said, "Well, Doctor, you are one man in a million," and he turn-

ed and said, "I hope you won't hold it against me." I said, "No, Mr. Butler, I suppose according to your light it is right, but according to my lights it is wrong." He said, "If I can ever do anything for you, call on me," and he said "Good evening," and stepped out. Butler did not sit down all the time he was with me; he did not go into the next room to my office; peered in as if looking for somebody; when I told him I would not take the money he made a motion towards me as though he was trying to put the roll in my coat; his first visit was before I knew any bids had been put in.

Cross-examined. I fix the date September 16, because the wife of a friend of mine returned from Europe on the 22nd, Mrs. Bell; had told her husband of the Butler interview; told him on the Monday before she returned, that was the evening of the interview, the 16th, I think; did not know then that the ordinance had been approved by the Mayor; knew nothing about that; am not sure it was the 16th; that is why I say "on or about" the 16th. Was present at the meeting of the Board when the bid was opened; did not tell any of my fellow members about the attempt to bribe me; nor on the 3rd of October when we accepted the bid.

Had talked to Dr. Merrell about it; we had discussed if it was possible for anything to be done and we had concluded there was nothing we could do and we let it alone. Talked to a few other people but I made up my mind that it was simply my word against Mr. Butler's word; told a friend, Mr. Hodder, of it as an

interesting incident; took no action until I was summoned before the grand jury in the winter of 1901-2.

Mr. Krum. You were satisfied in your own mind that it was a deliberate attempt to bribe you and you took no action with reference to the incident at all? I did take action, sir. I spoke to Dr. Merrell and discussed it; spoke to half a dozen men and asked if there was any possible way by which we could reach this thing before the meeting of 1st October, the conclusion we all came to was that there was nothing that could be done, since there was no one present at the interview but him and I. Therefore I gave it up, sir.

Mr. Krum. Did you feel that your word required any corroboration?

Mr. Folk. We object to that question.

Dr. Chapman. It is a perfectly superfluous question. You are trying to prove that I am lying now. Must I answer the question?

The COURT. I will not force the witness to answer the question.

Mr. Krum. My question was whether he felt that his word needed corroboration. I submit that that is entirely a proper question.

Dr. Chapman. They are trying to prove that I am lying now.

The COURT. If you can answer it, you may do so.

Dr. Chapman. I can answer it. I felt that it was necessary to have corroboration.

Mr. Krum. And therefore you did nothing about it, except to discuss it among your friends? I

am talking about impossibilities. I talked among my friends, in the way of discussing impossibilities.

Mr. Krum. You went on and voted for the contract, and moved the adoption of it yourself, and the letting of the contract, and did not inform Dr. Starkloff, the Health Commissioner, the Mayor, the Acting Mayor or the member of the Board of Police Commissioners, or any other member of the Board with the exception of Dr. Merrell? You did not say a word to any of them, with the exception of Dr. Merrell? No, sir, not a word. And all the explanation that you have to give for your silence is what you have given here? Yes, sir.

Dr. Chapman. Went with the Board one day to visit the Sanitary Company's works; don't remember if it was before or after my interview with prisoner; know Mr. Claude H. Wetmore; he was at my house early in October; did say to him then that I could not recall the exact date of Butler's visit; had not called to mind the date of Mrs. Bell's return at that time. Wetmore came to interview me for a newspaper. Did not say to him that Butler said to me, "Doctor, we have \$50,000 tied up with our bid. As soon as that is released I would like to make you a present of \$2,500 or so;" when Butler came to my house I knew that the reduction ordinance was pending in the Municipal Assembly; did not know whether it had passed; did not tell Wetmore that I was sure there was about \$2,500 in the roll Butler offered or that I saw a \$500 bill; in November the second visit Butler came in a buggy; saw no one with him; told Mr. Wetmore

that I could not understand why Butler made such an offer to me because under the ordinance we could only award the contract to a concern that employed the Merz system and the companies in which Butler was interested were the only ones that used that system.

Mr. Folk. When Mr. Wetmore came out to see you what did he say? Whom was he representing? He said he was representing the *McClure Magazine*. What did he say he wanted to do? He says, "Doctor, I am going up to Columbia Friday or Saturday, and I want to get an article in the October number of *McClure's Magazine*, and to prepare another for the November number. We are getting the photographs and material together, and I want that when I get to Columbia I will only have to telegraph details of the trial; I would like to interview you for that purpose." He said, "Doctor, it will not be published before November 1st, in *McClure's Magazine*." What was it you said to him regarding the \$50,000, if it was mentioned. What I said to Mr. Wetmore was in substance what I have already said, that Butler said to me in my house. He spoke about the reduction works which he had in the southern part of the city, their capability of taking care not only of the city's garbage but a great deal more and his company would put in a bid. Butler said to me, "our company will put in a bid, and if we receive the bid we will have to put up a \$50,000 cash bond for the faithful building of the works. After you have examined those works this \$50,000 will be taken down and released, which, as you

know, we have our work nearly completed, it won't stay up very long, and then if you will vote for this contract for our company I would like to make you a present of twenty-five hundred dollars."

Dr. Chapman. Besides the two persons I have named I told the story of the attempt to bribe me to my wife and to John R. Harkins, E. A. Bell, Earl Lehman, Mrs. Morison, of Chester, Ill., and her daughter, Ada, Dr. E. W. Saunder, Dr. Wessler, Phil. Bardemeyer, Mr. Rotty and Captain William R. Hodges; when any of the wives of these gentlemen were present they heard the story, too; it was a matter very freely discussed by me among my neighbors and friends.

To Mr. Krum. In my talks with these people I gave them to understand it was an attempt to bribe me as a member of the Board of Health. Did not tell them it was on the 16th September but about that time; did not tell the grand jury it was on September 29.

Mrs. Bella M. Chapman. Am the wife of Dr. Chapman; have seen the prisoner before; he called at our house and asked if the Doctor was in; told him no he was at a Board of Health meeting and would not be back until 7. He said he would drive around the block and call again; this was about six in the evening. He then drove away; he did not come into the house; I had answered the bell and the conversation was on the doorstep. He came and went away in a buggy. Did not see him again that night.

Think it was a Monday he

called, in September; do not recollect the date.

Tillie Blattau. Am 16 years old and am nurse in Dr. Chapman's family; recognize the prisoner as a man I saw in Dr. Chapman's house three times; the first time was about the middle of September he came up the steps when I was on the sidewalk with the children and asked Mrs. Chapman if the Doctor was in; she said no and he said, all right, I will drive around and call again. He came in a buggy; and got into the buggy and drove off; saw him when he came into the house about an hour after. Saw him talking to Dr. Chapman in his office. The third time was when I went to the front door and he asked if the Doctor was in; I said yes and if he would take a seat I would tell him; he came in the same buggy every time. I mean the first and third times I saw him; there was a black man with him; he staid in the buggy when Mr. Butler was in the house.

Cross-examined. The first time I heard Mr. Butler tell Mrs. Chapman that the Doctor was at the Board of Health meeting; told my aunt; the next time I saw her; had no reason—just talking like. Told nobody else.

To *Mr. Folk.* Have talked to you about it and to Dr. Chapman. The reason I just said I had talked with nobody but my aunt was I thought you meant just after it happened.

Ella Vincil. In September, 1901, I was cook for Dr. Chapman; and did general housework. Saw Mr. Butler once when he called at the house and asked if Dr. Chapman was in; think he was in a buggy; saw it as I went

to call the children to supper. Don't recall the month; it was early in the fall.

Dr. Albert Merrell. Am a practicing physician living at 3814 Washington avenue, St. Louis. Have been a member of the Board of Health since spring of 1895; the prisoner called at my house in September, 1901. my office is in my house, about half past ten a. m. and remained till after 11. He spoke of the pending bids, these bids that were to be submitted by the Sanitary Company for the purpose of renewing or obtaining a new contract for the disposal of the garbage. He remarked that they were very anxious to secure it because of the fact that he claimed they had made no money on their former contract and had been at very large expense for repairs and reconstruction, and that they were desirous of securing the contract—especially desirous of securing it for that reason, even for the brief period which was proposed, three years, although he had hoped to secure it for seven years. He spoke about their ability to take care of the garbage, the extent and perfection of their equipment for that purpose, which I was already aware of, and assented to, and I remarked that with such an equipment they certainly ought to be able to make the best bid for another contract. He then stated, "I will tell you right now the bid will be higher than it was before;" he didn't say how much higher or what the bid would be, but that it would be higher. I said I was sorry it was to be higher, as I thought they were in a position to do at least as well, if not better than before, on the

old contract. I mean in price. He said nothing about my vote or about the votes of other members of the Board; but he did say "You will not be reappointed on the Board of Health, and if I got this contract—"not that wording, the words were "When the contract is approved and becomes a law, I will make you a present of twenty-four hundred dollars." I said "I don't want any of your money; if I were to accept one penny in the situation I am placed in, I would feel as though I was accepting a bribe, and I know every one else would believe I was too." He then said he had no such intention. That practically ended the conversation. He left very soon afterwards.

This interview took place at my office, at my residence, 3314 Washington avenue, St. Louis. Saw Mr. Butler at my home. Can not identify the date; it was after he came to my house; after the approval of the contract and after the money which had been put up under the terms of the ordinance had been returned to the Sanitary Company. This second visit I don't remember that he made any remark; when I came down stairs to the office he was sitting with his hand open containing what appeared to be a quantity of gold coin and bills he said nothing. I said, "Mr. Butler, I thought I made myself understood at my last interview; I cannot accept one penny from you, whether you call it a present or any other name." The interview lasted but a few minutes when he passed out and went away.

He said nothing that I recollect except to thank me—don't

know whether it was because I refused the money or voted for the contract. Presume first visit to me was made before I knew what the bids were; before they were opened; the last visit was after the contract with the Sanitary Company had been approved by the Board of Health. I recall the visit our Board made to the Sanitary works on September 28; prisoner was there. L. Blakely, the secretary, made a speech about the price they were getting.

Cross-examined. Butler's first visit was on Sunday 29th; can't fix exactly the date of the second, September 16 was one of the regular meeting days of the Board; Dr. Chapman did not tell me of the attempt to bribe him at the excursion to the works on the 8th; nor did I at the subsequent meetings of the Board tell the members of his proposal to me; considered that the Sanitary Co. was the only concern that could do the work required by the ordinance—the Merz process; it would cost a new company a great deal of money to erect works; also to get a location; people do not like such works near them; they call them "stink factories." In voting for the contract we felt there was nothing else to do though Dr. Chapman and I were in favor of asking for a new bid.

Mr. Rowe. Was there any other way of making disposition of the garbage except by reducing it by some process of reduction or destruction? Yes, it could be taken out of the city if any one would contract to do it. Where could it land after being taken? Who would permit it to get upon his soil out-

side of the city? That is a point I cannot answer, but it is done elsewhere. Do you think it was possible to take two or three hundred tons outside of the city and plant it on farms out there? Yes, but I think there is a more profitable method of caring for it by reduction, or by some process that will utilize any garbage that is of value. Couldn't throw it in the river, could you? No, not at the present time. Not legally.

Mr. Folk. Prior to a federal law on that subject they used to throw it into the river, did they not? St. Louis used to dispose of their garbage in that way in former years.

Mr. Folk read the contract between the city and the St. Louis Sanitary Co., which had been recommended by the Board of Health; it was dated October 9, 1901. It was for a term of three years from November 17. The Sanitary Co. agreed to dispose of all "slops, offal, garbage, vegetable and animal matter" in St. Louis by the Merz process for which the city was to pay the Company \$130,000 a year, monthly.

Mr. Folk read the *Journals of the Municipal Assembly* approving the contract.

THE WITNESSES FOR THE DEFENSE.

Max Kaufman (recalled). From my records it appears that there was no meeting of the Board on September 16, although it was a regular meeting day. The members were notified as usual, but it was found there was no business to transact; can't say what members were present; the record don't show. There were meetings on September 23 and 26. Drs. Chapman and Merrell were at these meetings; the invitation to visit the works was accepted on the 26th. Neither Drs. Chapman or Merrell said anything at these meetings about any attempt to bribe.

Mrs. Thalia N. Merrell. Am wife of last witness; have seen prisoner before one Sunday morning in my husband's office. Was going to church and saw him come in a buggy; he was there when I left for church.

Edward A. Bell. Reside in St. Louis; am a salesman for the Armour Packing Co. Had a conversation with Dr. Chapman four or five days before my wife returned from Europe, 22nd of September, at a friend's house, Mr. Arthur Hodder; it was about a visit of Edward Butler to his house in relation to the garbage contract.

Joseph Hornsby. Am President of the St. Louis City Council and a member of the Board of Health. Remember the letting of the garbage contract to the Sanitary Co. There was only one bid received; know of no person or corporation that could have performed that work except the Sanitary Co.; don't think it was possible for other works to have been erected in time; was spoken to by others about bids; but they offered nothing definite.

Dr. Max C. Starkloff. Am Health Commissioner of St. Louis and a member of the

Board of Health; the only plant in the city capable of doing the work required by the garbage ordinance was the St. Louis Sanitary Co.; am familiar with such plans; don't think it possible any plant could have been erected in time to do the work after the old contract expired; about 250 tons of garbage were reduced daily in 1901 as against 100 in 1895 when I became Health Commissioner.

To Mr. Folk. The salary of the medical members of the Board of Health was year.

Andrew Blong. Am a police commissioner of St. Louis and a member of the Board of Health. Do not know what company had the Merz process. Understood that there was no other company in St. Louis but the Sanitary Co. that could reduce the garbage, so I voted for its bid—the only one made.

E. C. Bryant. Have been superintendent of the St. Louis Sanitary Co. since 1891; in 1891 the time of our first contract with the city we had only one plant; the next year we built another one. There was no other works in the city in 1901 capable of doing the work called for; a new one would find it hard to get a location; people object to it; call it a stink factory, I don't think it's so bad but other people do; new works to take charge of all the garbage of the city would cost from \$300,000 to \$350,000.

To Mr. Folk. Know that Mr. Butler is a stockholder in the Sanitary Company; don't know it pays him a salary; we make the garbage into fertilizing material, we also get grease which we sell to soap makers; all our

work is under the city contract; if we did not get that we would not exist at all.

Charles W. Francis. Am Assistant Health Commissioner of St. Louis; other than the Sanitary Co. there were no works that could in September, 1901, have reduced the city's garbage as required by the ordinance. They had had no competition for years and no one had gone into the business except in a small way; the St. Louis Dressed Beef Co. used the Merz process for their own offal and there was a small one on Cherokee and DeSoto streets that reduced the garbage from some of the hotels and restaurants.

John K. McCarthy. Reside in St. Louis; went with Ed. Butler to Dr. Chapman's house in a storm buggy; it was about the middle of October, about five thirty in the evening; again about the same hour about the first of November; did not go into the house with him.

To Mr. Folk. Am an inspector for the Excelsior Hauling & Transfer Co.; generally a colored man drives Mr. Butler but I do occasionally; when this case was first set for trial I was over in Illinois buying horses, didn't come here in August because I was not subpoenaed.

James J. Butler. Am a son of Edward Butler; am an attorney and a member of Congress from St. Louis. Was in the city on September 16th.

Mr. Krum. Did you see your father on that day? I did. What was his physical condition at that time? He was confined to his room with a very painful case of the gout. How long he

IX. AMERICAN STATE TRIALS.

had been confined before I do not know, but I got into the city on Sunday, I think it was the 15th of September. I found him on my return home confined to his room at that time, know he was confined prior to the 15th; from hearsay from the family. How do you recollect the date so distinctly, Mr. Butler? It was around the middle of June when myself, my boy and wife and my sister's family took a cottage at Asbury Park for the summer; about the first of September I abandoned the cottage and left it in care of my sister and went to the Buffalo Exposition; was at the Exposition at the killing of the President, and from there came to New York and stayed there a few days, came back to Washington and was in Washington on the night that the President was dying; it was the night of the 13th, he was very low and dying; was watching the bulletins of the Washington Post; about 12 I went to the Raleigh Hotel, where I was stopping, and at 1 or 2 o'clock we got the announcement the President was dead. The next day we left for home in the afternoon and got to St. Louis next night—Sunday, September 15th.

To Mr. Folk. Am not proprietor of the Standard Theater; was its manager some years ago; my only connection with it now is as president of the Empire Circuit Co., which does booking for 30 or 40 different theaters in this country.

Edward Butler, Jr. Am son of Edward Butler, am 38 years old, a horseshoer in St. Louis. On September 16th last father was laid up with the gout. Saw

him confined to his room on that day.

To Mr. Folk. On 17th of September father telephoned to me from his room about the garbage contract. Saw him that day; he was in his room but able to get up.

Claude H. Wetmore. Reside at Webster Groves, 10 miles from St. Louis; am a writer of books and magazine articles. In October, 1902, was associate editor of the St. Louis *Chronicle*; published an article entitled in the *Chronicle* on the 11th of October from material I obtained from Dr. Chapman at his office in his house on the 8th or 9th, I think; I made notes of what he said on a pad; am not a short hand writer. I requested Dr. Chapman to give me an interview and he consented; I asked him to give me the details of Ed. Butler's first interview with him.

Mr. Krum (reading from the *Chronicle*). Did he give you this answer: "It was in the evening that Col. Butler called, about dusk, he drove up in a storm buggy, and was shown into the parlor. As I said, I do not remember the exact date. You see the Municipal Assembly had passed an ordinance specifying that the contract for disposing of the garbage should be awarded to a Company which would use the Merz process of reduction. After this ordinance had been passed the Board of Health advertised for bids." Cannot state that he made it exactly in those words; but the substance as I can remember it now, is the way he stated it to me. I wrote it out within an hour afterwards from the notes I had. In writing it out I intended to tell the

truth, to give substantially what had been stated to me.

Mr. Krum. Did Dr. Chapman make this statement to you on that occasion: "Well, we talked along those lines for some little time, and then he said to me. "Doctor, we have \$50,000 tied up with our bid; as soon as that is released, I would like to make you a present of \$2,500?" That is in substance; there was a great deal Dr. Chapman said that was not there, in reference to what he and Butler had been talking about the garbage works, and I did not bring that into my interview, so the sentence commencing "Well, after we had talked along those lines for a certain time" is the sum and substance of what he stated. Did Dr. Chapman tell you on this occasion that Butler said to him, "Doctor, we have \$50,000 tied up with our bid, and as soon as that is released, I would like to make you a present of \$2,500?" Yes. Did you ask Dr. Chapman this question: "Did Col. Butler make you the offer of \$2,500 for your vote on the garbage contract?" Yes. Did he give you this answer: "No, not in those words. He simply said that he wished to make me a present?" Yes. Did you ask Dr. Chapman: "Why did he wish to make you this present?" I probably did. Did he then make you this answer: "That I could never understand. There was no necessity for his offering anything to any member of the Board of Health. Under the ordinance passed by the Municipal Assembly, they could award the contract only to a company which employed the Merz system of reduction, and the works in which

Col. Butler is interested are the only ones that employ this system, besides Col. Butler's company was the only one to introduce a bid?" Yes, he said that and more on the same line. That is a condensed statement of his rather lengthy conversation about expressing surprise that such a thing should have been done. Did Dr. Chapman furnish you with a picture or a photograph from which a picture was taken for the paper? Yes.

Mr. Folk. In getting up newspaper interviews, you don't attempt to use the exact language. This is written in your own language, is it not? Yes, sir. It is written in—well in the general run of interviews, they are written in the language of the writer, but in special cases he tries to adhere as closely as possible to the phraseology of the person interviewed. He gives his own impression of the substance of the interview with the person he is interviewing. Is that correct? Yes. Of course reporters sometimes make mistakes, don't they? You have heard of that? I have heard of it. You know that newspapers are not always accurate, don't you? They are not; they try to be; try harder than most people believe that they do. And having to come out every day, in the rush and hurry of getting the news, they sometimes get pretty much mixed up? They do at times get mixed up, certainly. We all err. You remember what the Doctor said to you concerning the first question, "Doctor, will you please give the details?" He waived his had and said: Visit? There were two visits." In answer to the question "Con-

earning the first visit, Doctor, will you please give the details; what did he tell you?" He told about Butler coming to his home on a certain evening about dusk, and was shown into the parlor of the outer office, that he talked with him, or Butler talked with him a long time about the garbage reduction works and asked him his opinion of the plant, what he thought of it, and the Doctor told him that it was one of the best plants he had ever seen. He thought it was thoroughly equipped, and after a little while Dr. Chapman said to me that the conversation changed, Butler said to him "Now, we have \$50,000 tied up in this contract or on this bid, and as soon as I get the money released, I would like to make you a present of \$2,500," and Dr. Chapman replied to Col. Butler that that was bribe money or money that he couldn't afford to take? I can't, of course, recollect all was said in the interview, try to recollect the substance, not the details; could not repeat my article now from memory; I did not give in the paper all that the Doctor said; I left out what I thought would not be interesting. I was endeavoring to get a good newspaper story and wanted to fix it so that it would be interesting to readers; I interviewed Ed. Butler several times.

Mr. Folk. Did Edward Butler on one occasion say to you that he did offer these men the money, the \$2,500, but as a present? No. He did not say that to me. I would like to tell the interview I had with him. Go on and tell what he said about the offers of this money? I had several interviews with Col. Butler

about this matter as to this particular one, in which he told me of the money which he had offered Dr. Chapman, as far as I can recollect, he said—I think he used the word "guess;" he said "I guess I offered a present, but I didn't think to bribe him, no sense in bribing him," he says, "I guess I offered him a present, but never attempted to bribe him." Did he say anything about Dr. Merrell? He told me he thought Dr. Merrell was a perfect gentleman. He did not use the word "money" speaking of him. He put it in a way, "I guess I offered him a present."

Edward Butler. I am the defendant in this case; am 64 or 65 years old, cannot tell within a year or so of my age; have lived in St. Louis since 1857. Am a master horseshoer; guess I have been in the horseshoeing business since I was about 11 years old; commenced to ride horses for the horsemen in New York when I was about 11 and went at the business from that time on.

Mr. Rowe. Mr. Butler, what was your physical condition on the 16th of September, 1902? I was laid up nearly all that month with the lumbago in my back and gout in my foot; once in a while I might get my nigger to take me out in the buggy; recall two instances when I went out; about the 28th or 29th of September, when the Board of Health went to visit the St. Louis Sanitary Works; remember going out that day; my nigger took me down and I went through the Sanitary Works with them and came back. I was out of my bed about 2 o'clock and went down

and met them, they came down there in two carriages. I will ask you, Mr. Butler, if on the 16th of September, 1901, at dusk, or between 6, 7 or 8 o'clock on that day you visited Dr. Chapman's residence? I have not visited Dr. Chapman's residence at any time in September, 1901—1891—not at anytime. You did not visit his residence at any time during that month? At no time during that month; I never visited anybody else, any more than Dr. Chapman, outside of my son's house, which is across the street.

Mr. Folk. You say, Mr. Butler, that you did not visit Dr. Chapman's residence nor anybody else's residence during the month of September, except possibly your son's house across the street? That is what I said. Didn't you go to the residence of Dr. Merrell in September? In September, no, sir. Dr. Merrell is simply mistaken, Dr. Chapman, I don't think, is. You say you did not go to Dr. Chapman's residence? Positively I did not. What physician was waiting on you at this time?

None at all. Didn't you have a physician? I have not had a physician for these two diseases—I am subject to them and have been for several years; I am an expert on these two diseases of gout and rheumatism; I have them very often and I know as well as the doctor what to do for them, and a good deal better. I have not had a physician in several years, but I have the diseases very often.

To Mr. Krum. St. Louis Sanitary Co. is capitalized for \$500,000 at \$100 a share; how many shares that is you can figure it out; you are a better figurer than I am; that of the Excelsior Hauling Co. is about \$3,000; I hold 80 shares of the Sanitary Co. and 10 of the 30 shares of the Hauling Co.

To Mr. Folk. I buy a good deal of bonds and stock and speculate in that way besides horseshoeing; have never tried to get bills through the Municipal Assembly except where I have an interest myself in them; you think my business was generally bribery. I say emphatically—no.

IN REBUTTAL.

William R. Hodges. Live in St. Louis; am in the Granite business and a member of the City Council. Dr. Chapman is my son-in-law.

Mr. Folk. Did Dr. Chapman tell you of a visit Edward Butler

made to his house in October, did he tell you of it in October?

Mr. Krum. We object to this evidence.

JUDGE HOCKADAY. The objection is sustained.

THE INSTRUCTIONS TO THE JURY.¹⁵

At the request of the State the Court gave the following instructions:

1. The Court instructs the jury that under the laws of the State of Missouri the city of St. Louis is a Municipal Corporation of the

State of Missouri, and that its legislative power is vested in a Council and a House of Delegates, comprising the Municipal Assembly of said city; and that under the Charter of the said city the Board of Health of said city is composed of six members, to-wit: The Mayor, the President of the Council, a Police Commissioner, the Health Commissioner and two regular practicing physicians; said physicians being appointed by the Mayor and confirmed by the Council of said city. 2. If you believe and find from the evidence that Dr. Henry M. Chapman was appointed as a member of the Board of Health of said city by the Mayor and confirmed by the Council for a term of four years from and after the 25th day of April, 1899, and was qualified by taking the oath of office on the 25th day of April, 1899, and continuously thereafter held and discharged the duties of such office then you will find that the said Henry M. Chapman was a public officer of the city of St. Louis during the month of September, 1901. 3. That under the ordinance of the city of St. Louis numbered 20476, mentioned in the indictment and admitted in evidence (if you believe and find from the evidence that such ordinance was passed by the Municipal Assembly and approved by the Mayor), the said Board of Health was authorized, and it became their duty, within fifteen days after the approval of said ordinance, under the supervision of the Register of said city, to cause to be inserted for five days in the newspapers doing the city printing of said city, an advertisement asking for sealed proposals for the sanitary disposal of slop, offal, garbage, vegetable matter and animal matter of said city, by the "Merz Process;" And that the said Board of Health was authorized by vote of a majority of its members to enter into contract for the sanitary disposal of all such slop, offal, garbage, vegetable matter and animal matter of said city by the "Merz Process," within thirty days after the date when said ordinance was approved by the Mayor as aforesaid, and that under the provisions of said ordinance said Board of Health was authorized to award such contract to the best bidder therefor, and at the same time had the right and privilege to reject any and all bids, or sealed proposal of such slops, offal, garbage, vegetable matter and animal matter of said city by the "Merz Process." 4. If you believe and find from the evidence beyond a reasonable doubt that the ordinance aforesaid numbered 20476 was passed by the Municipal Assembly of said city of St. Louis by a majority vote of the said Council and House of Delegates respectively, in the month of September, 1901, and that it might therefore become the duty of the said Board of Health as aforesaid to advertise for such sealed proposals as

¹² Under the Missouri practice the jury is not charged by the Judge at the end of the case, but after the evidence is concluded before the addresses to the jury written instructions are drawn up by the counsel on both sides and submitted to the Judge for approval or rejection. The Judge then reads these instructions with other written ones which he adds himself, and they are taken by the jury to their room.

aforesaid under the terms of said ordinance and to enter into a contract as aforesaid with the best bidder therefor;

And that afterwards and before any such sealed proposals were received or such contract awarded by such Board of Health, the defendant, Edward Butler, knew that such ordinance had been so passed by the Municipal Assembly aforesaid, knew that it would or might be the duty of the said Board of Health to advertise for such sealed proposals as aforesaid; knew that said Board of Health would or might be authorized to let said contract as aforesaid to the best bidder therefor, knew that said Board of Health would be authorized and have the right to reject any or all of any such sealed proposals, knew that said Henry M. Chapman was a member of said Board of Health, knew that the St. Louis Sanitary Company was a corporation and was about, or intended, to make to said Board of Health a sealed proposal for the sanitary disposal of all slops, offal, garbage, vegetable matter and animal matter of said city under the "Merz Process" in accordance with the provisions of said ordinance. And that the defendant, Edward Butler, at any time between the passage of said ordinance and the opening of any such sealed proposals, at the said city of St. Louis, did unlawfully, corruptly, and feloniously offer and propose to pay to the said Henry M. Chapman the sum of \$2,500 or any other sum of money, with the intent then and there unlawfully and corruptly to influence the opinion, decision and vote of the said Henry M. Chapman as a member of the said Board of Health and in his official capacity and character as a member of the said Board of Health, for and in favor of a sealed proposal of said St. Louis Sanitary Company, or to award such contract to said St. Louis Sanitary Company, or to award such contract to said St. Louis Sanitary Company, for the Sanitary removal of all slops, offal, garbage, vegetable matter and animal matter of the City of St. Louis by the "Merz Process" under the provisions of said ordinance. Then you should find the defendant guilty of an offer and attempt to bribe an officer, as charged in the indictment; and unless you so believe and find beyond a reasonable doubt it is your duty to acquit him. 5. If the jury find and believe from the evidence beyond a reasonable doubt that the defendant offered and attempted to bribe the said Henry M. Chapman at the time and place, and in the manner and form as charged in the indictment and as explained in the preceding instruction, then you should return a verdict of guilty, although you may find from the evidence that the said Chapman refused to accept such bribe. 6. If you find the defendant guilty of an offer and attempt to bribe an officer, as charged in the indictment, you will assess his punishment at imprisonment in the penitentiary for a term of not less than two nor more than five years; or at imprisonment in the county jail for a term not exceeding one year and a fine of not less than \$1,000. 7. Feloniously, as used in the indictment and in these instructions means wicked and against the admonitions of the law.

Corruptly, as used in the indictment and in these instructions

means wrongfully; it is the doing of any act to obtain an improper advantage inconsistent with the official duty and the rights of others. 8. The jury are further instructed that the testimony of the witness, Dr. Albert Merrell (if believed by the jury) does not prove nor tend to prove that the defendant committed the offense charged in the indictment, but is to be considered only in determining the intent of defendant by his words, acts or conduct in relation to the charge against him in the indictment in so far as any such words, acts or conduct have been proven by the evidence in the case to the satisfaction of the jury beyond a reasonable doubt. 9. The jury are the sole judges of the credibility of all the witnesses, and of the weight and value to be given to their testimony. In determining such credibility, weight and value, you will take into consideration the character of the witness, his or her manner on the stand, his or her interest (if any) in the result of the trial, his or her relation to or feeling toward the defendant, or the prosecuting witness, Henry M. Chapman, the probability or improbability of his or her statements, as well as all the facts and circumstances in evidence. And if you believe that any witness has wilfully sworn falsely as to any material matter in controversy you are at liberty to disregard the whole or any part of such witness' testimony. 10. The indictment in this case is merely the formal charge preferred against the defendant and does not prove nor tend to prove any of its allegations, and should not be considered by the jury in determining his guilt or innocence. The law presumes the defendant to be innocent, and this presumption continues until overcome by evidence which establishes his guilt to your satisfaction and beyond a reasonable doubt; and the burden of proving his guilt rests with the State. If of his guilt you are not satisfied by the evidence beyond a reasonable doubt, your duty is to acquit him. But a doubt, to authorize an acquittal on that ground alone, ought to be a substantial doubt touching his guilt and not a mere possibility of his innocence. 11. The defendant is a competent witness in his own behalf, but in determining the weight to be given to his evidence the jury may take into consideration the fact that he is the party charged and the interest he has in the result of the trial.

At the request of the *Prisoner*, the COURT gave the following instructions: 1. The Court instructs the jury that the indictment charges that the defendant attempted to commit the offense of bribery, in that he, as alleged, intending to corruptly influence the vote of Henry M. Chapman, as a member of the Board of Health of the city of St. Louis so that it would be given in favor of awarding the contract bid for under ordinance 20,476 to the St. Louis Sanitary Co., offered a sum of money to said Chapman for such vote. The commission of this offense depends upon the proof beyond a reasonable doubt of two facts, the establishment of both of which by the State is essential, and without such establishment of both of which there can be no conviction. These facts are: First. The offer of a sum of money to Henry M. Chapman. Second. The intent or special purpose by such offer to secure or influence his

vote as before indicated, and unless both of these facts have been proven by the State beyond a reasonable doubt, there must be an acquittal. The Court further instructs you, that to have proven that money was offered to Chapman before the contract was voted on, will not have even raised a presumption that it was so offered with the necessary guilty intent, because both of the facts must have been proven and the proof of the one does not raise a presumption as to the other. The State is required to have proven that money was offered before the vote, and was so offered with intent to influence such vote, even if the jury find that money was offered after the vote had been given and not before, still there can be no conviction. It is wholly immaterial what the defendant did after Chapman gave his vote as proving the charge in the indictment, which can only have been established by the State having proven, with the degree of certainty as indicated, that before the vote was given money was offered with the corrupt intent to secure influence of such vote. The jury are instructed that the evidence of the witness Merrell cannot be considered by them as tending in any manner to establish the fact that an offer of Twenty-five Hundred Dollars or any other sum was made, but said evidence is only to be considered by the jury in determining the intent of the defendant, if the jury find that such an offer was made to said Chapman. The mere fact that the defendant may have offered a present of Twenty-five Hundred Dollars or any other sum to the witness Chapman that a bid had been or was about to be made by the Sanitary Company for the reduction of garbage under the ordinance of the city of St. Louis read in evidence is insufficient in itself to establish the defendant's guilt under the indictment. Although the jury may believe from the evidence that the defendant offered a present of Twenty-five Hundred Dollars or any other sum of money to the witness Chapman, and even though they may further believe that this offer was made before the contract for the reduction of garbage in the city of St. Louis was awarded to the Sanitary Company and that said Chapman understood it to be for the purpose of inducing him to vote in favor of accepting the bid of said company, still unless the jury further find and believe from the evidence that the defendant himself intended said offer as a bribe for the special purpose of inducing said Chapman to corruptly vote in favor of awarding said contract to said company, the jury must return a verdict "Not Guilty" in this case. The jury are instructed that before the defendant can be convicted under the indictment in this case, it devolves upon the State to prove to the satisfaction of the jury beyond a reasonable doubt that the defendant offered to the witness Henry M. Chapman the sum of twenty-five hundred dollars or some other amount of money for the particular purpose of inducing the said Chapman as a member of the Board of Health of the city of St. Louis to give his vote in favor of awarding the contract provided for in the ordinance of the Municipal Assembly of the city of St. Louis read in evidence to the St. Louis Sanitary Company, and unless this proof has been made the jury must return

a verdict, "Not Guilty." Even if the jury believe from the evidence that the defendant visited Chapman after his vote had been given, merely to reward him for having given his vote, yet there can be no conviction under the indictment. The defendant must have proven as elsewhere indicated, in the instructions given to have offered Chapman money for his vote before such vote was given. The Court instructs the jury that the defendant is presumed to be innocent of the charge laid in the indictment, and such presumption attends and surrounds him throughout the trial from the beginning to the end. It can only have been overcome by proof by the State which excludes every other reasonable hypothesis but that of guilt. The defendant is not called on to explain any circumstances in the case, but the State must have proven his guilt, and have so proven it beyond a reasonable doubt. Even if the jury believe from the evidence that an offer of money was made by defendant to the witness Chapman, yet the defendant must be acquitted unless the jury are satisfied from the evidence beyond a reasonable doubt that such offer was made before October 3rd, 1901. You are further instructed that evidence has been introduced in behalf of defendant for the purpose of proving an alibi—that is, that the defendant was at some other place and was not present at the time and place that the alleged attempt to bribe is sought to be proven to have taken place. You are instructed that an alibi is proper and legal defense for the consideration of the jury—unless therefore the jury are satisfied from the evidence beyond a reasonable doubt that the defendant was present at the time and place of the alleged attempt to bribe witness Henry M. Chapman, as testified by him, to have taken place, then you will give the defendant the benefit of such doubt and acquit him. The jury are further instructed that the defendant is a competent witness in his own behalf and you should not disregard his evidence because he is the defendant and testifying in his own behalf, but you should fairly and impartially consider and weigh his evidence by the same rule you supply to other witnesses in this case.

JUDGE HOCKADAY announced that three and one-half hours would be granted to each side for argument.

THE SPEECHES TO THE JURY.

Mr. Bishop spoke at length upon the conditions which would exist if such proceedings as bribery were permitted to go unpunished should such guilt be established as he believed had been proven by the evidence adduced. "There was a time when bribery was punishable by death under the common law. This has now been modified in the advance in civilization." He reviewed the evidence and pointed out the motives which ex-

isted for the commission of the crime. He showed the close relation between the Butlers, of the Sanitary Company, and of the Excelsior Hauling Company and the mutual interests of both and the uselessness of the reducing plant and of the hauling company had they not secured the contract which was awarded to the Sanitary Company.

In this case we have this condition to face: An ordinance was passed by the Municipal Assembly requiring that immediate provision be made for letting a contract for the removal and reduction of the garbage. The Board of Health was to let this contract, a body of men divided equally between business and scientific members. Now we have as the scientific members Doctors Chapman and Merrell, men who are experts and who were capable of determining such questions as the best means of handling the garbage for the interests of the city. And we have two companies existing in St. Louis—The Sanitary Company and the Excelsior Hauling Company, in both of which, the evidence shows you, Butler was heavily interested. Between these two companies the garbage of the city was carried off and disposed of. The evidence has shown that the St. Louis Sanitary Company had a large plant in St. Louis, a valuable plant, which had been used ten years, for reducing garbage; and Walter J. Blakely, the secretary of the company, has told you that the Sanitary Company was absolutely dependent upon the city business, having none of its own. And the Hauling Company, too, the evidence has made clear, did little but haul this garbage. Now, you can see, gentlemen of the jury, that the life of these two companies hung on the garbage contract.

The contract was not assured to Butler. The Board, to be sure, was anxious to have the matter settled, but they could have rejected all bids; they might have made a temporary arrangement for getting rid of the city's filth, until a competitor could have put up a plant to reduce garbage by the Merz process. If the latter had happened Butler's two companies would have been out of business. Naturally he would wish to save this loss. This was his motive.

Mr. Bishop closed in pointing out the personal traits of Dr. and Mrs. Chapman and of the household servants, showing that the family was honorable in every particular and that their evidence was admissable as honest, well-meaning people who would have no reason to make the charges against Butler for any motives other than for the observance of law and the benefit of the city.

Mr. Krum said he spoke in behalf of an aged man whose years had already carried him down the western slope of his earthly career. He said that bribery was not a trifling sin or offense to go unpunished, but saps the very root of social conditions, and to accuse a man like Edward Butler of this offense he would say once for all it was a perfect outrage, that Edward Butler, a horseshoer and aged blacksmith should be brought to the bar, a victim of a disciple of Ziegenhein, whose mayoralty career had brought disgrace upon the city of St. Louis.

Referring to the date upon which the bribe was said to have been offered he said that unless the bribe was offered on that date and before the time of the acceptance of the bid by the Sanitary Company that no bribery could have been intended and that there was no reason for the offering of money for the passage of a bill after it had already been passed upon. The defense had conclusively proven that Mr. Butler had not visited Dr. Chapman until after the acceptance of the contract by the Sanitary Company, and that nobody but Henry M. Chapman himself fixed the date as September 16. And he told nobody save Merrell of the offer of money to him before the contract passed the Board. It was not necessary to assail the nursemaid and the cook or Mrs. Chapman's testimony. When Chapman manufactured this case he did not know that the records showed that there was no business transacted on that date and that the members of the Board of Health had been notified that there would be no meeting. The records showed that the bill was signed on the 16th and approved by the Mayor on the 17th and did not become a law until the approval of the Mayor. Chapman says

Butler called at his house on September 16. This is on the testimony of Chapman alone. He singly stands for that date. Chapman manufactured this case. He was to make it appear that he was at a Board of Health meeting when Butler called the first time that day, whereas the testimony has shown that no meeting whatever took place that day. It is represented that Butler wanted to get the votes of Doctors Chapman and Merrell. Now, these last did not constitute the Board of Health. There were other members, and none of them had been approached by Butler. Whatever he was Butler was no fool and would not spend \$5,000 for the votes of two of six men, not knowing what the other four would do.

He took up the agreement between the Hauling Company and Excelsior Company and argued that if either company failed to meet the terms of the contract, Butler would be obligated to the city in the sum of \$150,000. A good investment, wasn't it? \$5,000 put up to assume this enormous obligation.

MR. MARONEY FOR THE STATE.

Mr. Maroney. Gentlemen of the Jury: I don't view this case in the light of my brother Krum, and the State is not dependent on Ziegenhein for its support. The reason that the Doctor did not expose this matter to the authorities, was because Ziegenhein had them by the throat; that is the reason. You gentlemen in this county read the papers. You are intelligent citizens, and you know that the corruption being investigated in the city of St. Louis had been placed before the grand jury before, and the man never brought to trial.

This physician is not a lawyer, and the able counsel on the other side seriously contended here before this Court that the evidence of Dr. Merrell was not competent, and yet he expects a physician to determine its competency and to be able to make a conviction by the aid of Dr. Merrell's testimony. Now, if this Doctor knew that in the trial of this case, he could be supported in his statement of these facts by the recital that Dr. Merrell was similarly approached, there would have been no hesitancy, and he would not have been subjected to the ridi-

cule cast upon him here this morning. That is the truth of the matter, gentlemen. The remarkable thing here is that in forty-five minutes devoted to the discussion of this case by one of the ablest men in this State, and I may say in the western country, that there has been no attempt of denial of the fact that the \$2,500 was offered. Did you observe that? Did you observe the innumerable instructions changing the phraseology that contained the same subject matter and centre about the same point, that unless you believe that this money was offered before this bid was accepted, there is no crime; by innuendo stating that the money was offered afterwards.

A man who is capable of approaching a public officer, even after he has discharged the public function and given him a bribe, would do it before, which you gentlemen know; you gentlemen know it. There is not a scintilla of evidence in this case, not a syllable of evidence in this case denying that this Doctor was offered the \$2,500, and you can't laugh that matter out of court. You cannot by ridicule and irony subject the Doctor to the disgust of the jury and blind them as to the facts. That won't do. There is not a scintilla of evidence in this case, I repeat, gentlemen, denying the fact that the only fact that you men are to pass upon,—did the defendant offer Dr. Chapman \$2,500 for his vote? And if you men who have paid strict attention, and I have noticed it, more so than any jury I have ever seen try a case, you have observed every particle of testimony, and if there is a syllable in it by any witness that took the stand on the part of the defense denying that he offered that man \$2,500, it is your sworn duty to acquit this defendant. On the other hand, if it is not denied, it stands proved and the State has made its case, and you men under your oath of office are bound to convict the defendant of the charge in the indictment.

This thing, you know, of dragging in side issues for the purpose of casting dust in the eyes of the jury is not even legitimate practice, let alone common honesty, that is supposed to exist between the jury and the counsel for the State or a counsel for the defense, because in all this proceeding the only

reason of the institution of course of justice is to arrive at the truth, and not mislead the jury.

There has been brought in here and read and rehashed before the jury many things that really have no place in this case, one particularly about the reasonableness of the increase of the price of the contract that is no issue in this case, and even if it was an issue in this case, it has been overdrawn. The State introduced testimony of the defendant's connection with the Sanitary Company; the State showed his connection and interest in the Hauling Company. The State showed that under the old contract the Sanitary Company got \$65,000 a year, and under the new contract it was to get \$130,000. Now, it would have been absolutely indifferent to this jury whether or not the increase in the price of that reduction was honest or otherwise. We simply introduced that to show that under the old contract the Sanitary Company got \$65,000, and under the new contract it was to get \$130,000, just exactly double, and that the contract ran for three years, which makes \$195,000; that the contract between the Sanitary Company and the Hauling Company gave that Hauling Company exactly half of that amount. That was the purpose of that, and it is a mighty peculiar and significant instance in this case, and it is more significant for the reason that right in the contract itself, right in the contract itself it recited that whereas the Sanitary Company cannot make a bid until they determine what the Hauling Company will charge for the extra hauling and whereas, under the original contract of the Hauling Company, it was determined that practically—and that is exactly the language of this contract between the Sanitary Company and the Hauling Company—that practically equal amounts of the garbage collection was to be sent to each of the plants. That is their own admission and their own comment. If that is true, and if taking the highest price placed here by the Commission by one of their own witnesses, yesterday, Mr. Francis, 30 cents a ton for all the garbage in the City of St. Louis, not half, but all, if all the garbage was hauled to the South works, and if

all the garbage was paid for, allowing the extra haul, the amount of it at 30 cents a ton would be \$24,000. Now, the evidence here is that one-half of it at least, which would make \$12,000 was not hauled to the South St. Louis plant. Granting that the other half went down there—what does the contract recite? It recites that they are to receive \$17,000 a year, or \$5,000 a year more than half of the hauling of the entire city, which would amount to \$15,000 for three years, and Mr. Francis testified that they did not allow this 30 cents a ton but for six months, and why? He said they allowed it only until the North plant was reinstated, and the North plant, according to the superintendent's own testimony, renders the horses and animals; so he gets a clear \$5,000 a year extra hauling that he is not entitled to under the terms of the contract. But a more significant fact than that is this: There is \$45,000 paid down in cash by the Sanitary Company to the Hauling Company. Supposing that Hauling Company, a corporation capitalized for only \$3,000, the stockholders liable only to the extent of their holdings, supposing they should have failed before the three years was up, what would become of the \$45,000 paid on the day of the contract? It would be gone forever, wouldn't it? Do you gentlemen pretend to sit there, you all read the papers and know Jim Campbell and John Scullin—do you pretend to sit there as business men or farmers and say that Jim Campbell or John Scullin would ever give up \$45,000 to anybody on earth unless they saw something coming back to them? There is not a word in this contract that compels the Hauling Company to give them a bond for the performance of their duties, not a word anywhere to show that this amount of \$45,000 will ever be earned. Supposing that three days after the \$45,000 was paid the Excelsior Hauling Company went into bankruptcy, where would that leave the \$45,000? But why was the \$45,000 paid? Why was it paid, that is the proposition, they are getting now \$45,000 which was in addition to the \$17,000 a year, and with the \$17,000 a year, they were getting \$5,000 more than they were entitled to even under the

highest profit per ton. Why was that \$45,000 paid? I don't know, gentlemen, but I have a right to assume, or rather to presume from the testimony in this case, and from all of the testimony the shortness of the time elapsing between the passage of the ordinance and the expiration of the old contract, all of the defendant's testimony has gone to show that they could not have obtained the new works in time to meet the exigencies of the case. Taking that into consideration, and taking into consideration that the health of a big community was at stake, it is reasonable to suppose that the defendant and the Sanitary Company throttled the city of St. Louis and robbed it of \$195,000 and proceeded to divide the plunder—

Mr. Williams. I object to that statement.

The COURT. The objection is sustained.

Mr. Maroney. That arises out of the testimony and sustains the legal conclusion.

Mr. Williams. I except to that last remark, and except to it as being made after the Court has sustained the objection.

The objection was sustained by the COURT.

Mr. Maroney. Now, gentlemen of the jury, all human action is controlled by motives. You never do a thing and I never do a thing unless we have some fixed purpose of doing it. We have to have something that actuates us and that is our motive or object in doing a thing. What object or motive could the defendant have in trying to bribe this Doctor? The motive is most simple; the most sordid motive that moves men, the motive that sometimes in thousands of instances ruins men. The greed for wealth, and in this first part of this century, that principle seems to be the dominant characteristic of the controlling elements of this country, as you gentlemen know. Now, what would be the motive for this defendant doing it? As already stated by Mr. Bishop the plant down there would be useless. In addition to that, he owned one-third of the stock of the Hauling Company, his son was the president of the Hauling Company, his son-in-law was the secretary. The half diverted from the Sanitary Company where he says he had only 80 shares out of the 5,000,

his portion, if it remained in the company would have been a mere bagatelle, but diverted from the Sanitary Company to the Hauling Company, he got a third himself and his family got the entire \$95,000, that is reason enough, isn't it? Mr. Blakely testifies that the defendant had 185 shares in the Sanitary Company. He is the secretary of the company, and is presumed to know. The par value of the stock is \$100; that would be \$18,500. He had a salary with that company of \$2,500 a year for three years; that would be \$7,500. He got one-third by directing the money, and he got a third for his own use of the \$96,000, which makes \$32,000. \$32,000, \$7,500 and \$18,500 makes \$58,000. That supplies the motive. By the profit of that contract and his holdings in the Sanitary Company he stood to win \$58,000 and a great deal less sum than that, gentlemen, has seduced many a man from the path of virtue and rectitude. That is the motive behind it all, and it won't do for Judge Krum to sneer at Dr. Chapman. There is not a man in the State who knows better than Judge Krum how to impeach a witness. He knows that you can never impeach a witness by insinuation and innuendo. This case has been pending for a long time—resources of the defendant are great—

Mr. Williams. We object to the statement. There is no evidence as to his resources at all.

The COURT. There is no evidence of his resources.

Mr. Maroney. There is evidence that he is a large speculator.

The COURT. Keep inside of the record.

Mr. Maroney. I am inside of the record, and never expect to go outside. The gentleman testified yesterday that he was largely dealing in stocks and bonds; that is the testimony here. The testimony is that he got \$18,000, and when I use the term "resources" I did not mean financially. I mean he had resources of getting witnesses here. This man Chapman lives in St. Louis. The defendant, if there was aught against that man's reputation, could have had the witness here to prove it, and the very fact that they are not here, is conclu-

sive evidence that the man stands unimpeached and incapable of impeachment. That is the way to test a man's veracity. If this man was of the regime of Ziegenhein, I am very proud of him, and I will tell you why the defendant went to those two physicians. Judge Krum seems to be befuddled on that proposition. The record here shows that these two men attended every meeting of the Board of Health, and the records show that the other members seldom attended, and these men were the physicians and naturally the active members of that Board of Health. One of them was asked here by the defendant's counsel if he had not been appointed an expert on matters of sanitation and he stated that he had; that he had made a report on this identical subject, used by this company. These two men were very active in the Board of Health, and Mayor Wells was not there. Mr. Hornsby was not there, Dr. Starkloff was not there. It was done in a couple of meetings and nobody was there except these two Doctors. They were physicians. They were not only civic members, but they were experts and properly represented the city in that capacity, where the healthfulness of the city was at stake, when they had control of its sanitary affairs. They were actively engaged in this matter, and the testimony of both of these physicians is that they both opposed the acceptance of this bid. Now it cannot be understood that the defendant did not know of the opposition of these men to that, because he had talked with them himself about this identical proposition and knew that they were the active bodies; in every community it is that body that controls the entire community. You know that in legislative meetings there are two or three men around which circle all of the other members and to whom they look to for guidance in everything they do in legislative matters, and in church matters it is the same way; there are a few members who stand out prominently by reason of the fact that they are active in church work, and by reason of their activity, they become experts in church affairs, and other members of the church look to them to do its work. You know that in politics it is the same way, sadly it

is too, much the same way. It is true about this matter. These two physicians became experts in the management of the Board of Health Department of the city of St. Louis. Mayor Wells had no time to watch alleys and run down stink factories and other places; they left that to men competent and capable, who by their professional training were known to be capable of attending to such matters. Butler knew that what these two men said would have a tremendous influence, as it ought to have with the other members of that body. He knew from talking with these members that they were actively opposed to the granting of this reduction contract at such a high figure. He sought an increase, and he knew of these facts, he knew that if he could gain control of these two men he could control that Board, and a sample of it was shown here yesterday, sufficiently to indicate to your minds just exactly the point I am making. Mr. Blong, who is Police Commissioner, a busy man in his own affairs, also a member of the Board by virtue of his being Police Commissioner, he told you yesterday on this stand that he did not know the name of the company that had the contract. That is identically an instance of what I am telling you; he did not know the name of the company that had the contract that cost the city of St. Louis \$195,000. You would not expect that that man was going to stand out against the two physicians who were experts in this matter. It is no reason, unless you would strike an obstinate man who would hold to his individual opinion by reason of the fact that he is obstinate, but that is not a practical proposition. The practical proposition is that these two Doctors could control the giving of the contract. Reasoning by a process of his own, with which you are largely familiar, he said: "Can there be any good come out of Nazareth?" Can Ziegenhein appoint a man that won't take money? And acting on his judgment in that regard he approached these two men, but thank God there was at least two in that rotten regime that were above the venal results and consequences of association with them. These two men stood out firmly, and if you are going to trip Dr. Chapman, he is in identically the

same situation as Dr. Merrell. There isn't even a suggestion by Judge Krum that Dr. Merrell did not tell the truth; not even an intimation; if Chapman lied, Merrell lied, too, and you cannot escape the consequences. If Chapman lied about this matter, Merrell lied, too, and I don't think there is any gentleman on this jury or any sensible man who had an opportunity of looking at Dr. Merrell when he was on the stand who would dare to say that man would lie under oath. He wouldn't dare to do it.

Now, what is the situation? The defendant says that he was not at Dr. Chapman's house in September, but he also says he was not at Dr. Merrell's house in September. In that he is contradicted by Dr. Merrell and his wife. He is contradicted by Dr. Chapman and his wife and two servants. Now you will have to take *ex parte* testimony of the defendant, and I say *ex parte* for this reason, that if McCarthy, granting that he was telling the truth, went down there, as he stated he did, still that would not say that the defendant did not make the offer to the physicians, because you recollect when Mr. Folk was asking Dr. Chapman some question about the visits of Butler, he says that he made these visits with reference to this matter alone, indicating to any intelligent man that the man had made other visits, and the defendants themselves have introduced a paper in evidence indicating that that was true, because they have introduced a paper here showing about the night hauling of slops and day hauling of slops, that Dr. Chapman and Dr. Merrell were the men controlling the collection of garbage in the hot summer months, that they approved the order granting to this defendant permission to gather the garbage at nighttime, and at the application of this defendant. It might have been made at home as well as anywhere else. They extended the time. There is no doubt that the defendant paid other visits, and granting that McCarthy told the truth absolutely, what does it prove? It proves that he made one visit about the 1st of November, and made another one on the first of November; in that he is corroborated by Tillie Blatta, the little girl who

happened to see him in there. He is corroborated by that to this extent only, that Butler was there on or about the 1st of November, because that is the time that he tried to push the money into the Doctor's bosom. We don't dispute that he was there about the first of November, but we do dispute that McCarthy drove him there, and that child on the stand, and you gentlemen saw her, and there is no reason why she should make any misstatement, that little child said when he came there on the 1st of November, a negro man, or as she expressed it, a "colored" man came out and fixed the collar of the horse. The defendant himself on the stand said that his "nigger" drove him out. The little girl said the second time, on the first night that the defendant was driven there that he was a colored man. When asked, "How do you know that?" she said, "When Mr. Butler got in the buggy, the lines were fastened in the horse's tail and he reached his hands out to get the lines and it wasn't a white man's hands."

Now, gentlemen of the jury, there is another reason why the defendant would have approached these men and not the others, and this is it: The circumstances of these two physicians, financially speaking, were modest. The defendant told Dr. Chapman, he says, "Doctor, you are not a millionaire," and the Doctor disclosed his financial situation by saying, "No, sir, I am not a millionaire. I am not a millionaire; I could use every dollar of that \$2,500 to good advantage, but I would never have an easy moment the rest of my life if I used a penny of it." That indicated, and it is undisputed, that indicated that the man's integrity was beyond reproach, and a man who is honest enough to deny the taking of \$2,500, situated in his financial affairs as this man is, would be incapable of manufacturing a case; he would be incapable of taking the stand and swearing to a lie, because, gentlemen, closely associated with bribery is its twin sister perjury.

Now, Judge Krum says it is an outrage to bring this defendant before this bar. Under our system of laws, gentlemen, every man in this community, every man in this

country, is amenable to the laws of this country, and the higher they are, and the more powerful they are, the greater the need to repress their encroachments on society, and you gentlemen know it, for whatever else can be said, gentlemen, of the law, this must be acknowledged, that it has its seat in the bosom of God Almighty; that every power and thing on earth obeys it. Its voice is the harmony of the world, it is the garb of the defenseless and no man however great or powerful, is beyond its power. It is an outrage to bring a man to the bar of justice—why? Isn't there evidence enough here to sustain a conviction? I tell you, gentlemen of the jury, that no man while we have control of the prosecution in the city of St. Louis will ever be dragged to the bar of justice or no man's fair name will be hurt and stained by an indictment, unless the evidence there under the law of evidence as used in courts of justice, will justify a conviction. That is true, gentlemen, and if we believed that the evidence in this case did not warrant a conviction under the laws of the State of Missouri this man would never have been indicted, and if indicted by a mistake, the indictment would have a *nolle pros*. Our duty is not to persecute a man, the man who takes the oath of office holds his hand up before Almighty God and swears that he will administer the law according to its dictates, and if he prosecutes any man in a spirit of personal vindictiveness and spite, he does not deserve the name of man.

I say to you, gentlemen, that in the prosecution of crime, we will not be enticed by blandishments, and we will not be deterred by threats of political destruction. We contend and maintain and intend that under all circumstances wheresoever found, whensoever found, or by whomsoever committed, a crime against the laws of this State will be punished. Now, gentlemen of the jury, when Dr. Chapman was on the stand, in an insinuating manner and for the purpose of prejudicing your mind he was asked "Did you believe that your word needed corroboration?" It was detailed at length, paused with sufficient length to give it emphasis and the voice was pitched in a key for the purpose of showing irony and sar-

exam, but the real fact of the matter is, gentlemen, that the Doctor felt, and you may feel yourselves—the Doctor felt that if he had given voice to this in a legal proceeding he felt that it would have been his word against the defendant's word. You have been instructed by the Court, and it is the law, that you must believe the defendant's guilt beyond a reasonable doubt. Now, the Doctor was right. The burden is on the State to prove the case. Even in a civil case the testimony would not have been sufficient for a verdict for the plaintiff, because the burden is on the plaintiff to make out this case, and one oath against the other don't make the case. There must be a preponderance of testimony in a civil case on the part of the plaintiff. In a criminal case the law is that you must be convinced, not by a preponderance of testimony, but by the testimony beyond a reasonable doubt. Now, this physician was placed in this attitude. This man had made this approach to him. If he had gone and complained to the authorities, he would have been told, and very justly so, "You cannot make a case. You haven't any witness to the transaction," and you will observe, gentlemen, that the defendant was particularly cautious when he made that third visit and attempt to thrust this money on this prosecuting witness. He said that he peered around in the other room. He afterwards said that he looked 'round in the other room. He was particularly cautious that there should nobody witness this transaction but himself and that Doctor, but being cautious, as a matter of fact he was indiscreet and ignorant of principles of law, and he forgot that when he used two men separately in the same position, that while the State could not have both men testify as to the fact of the one case, they could testify as to the facts of each case; they could show his intent by his attempt to bribe the other man. That is a point of law the defendant overlooked when he made this proposition to Dr. Chapman. If he had known, as he does now, that Dr. Merrell's testimony could have been used against him in a court of justice, he never would have approached either one of them.

Now, then, the Court instructs you, and it is the law, we will admit that freely—the Court instructs you that Dr. Merrell's testimony cannot be used to convict the defendant of the bribery of Dr. Chapman, but it can be used and the instructions are, and the defendant recognized that fact, that it can be used to show whether this was a present or a bribe. And that is the only reason that the Court allowed it in. It can be used to show that it was not out of the magnanimous heart of the defendant that the \$2,500 was given to Dr. Chapman, but that it was for the purpose of bribery, and it shows it absolutely, because Dr. Merrell says to him—Dr. Merrell said to the defendant's counsel when asked, "You did not think that that was in the nature of a bribe, did you?" He says, "Yes, I did think it was an attempt to bribe me," and the conduct of the defendant in the Merrell case is competent to show the conduct of the defendant in the Chapman case, because the actions in both cases were identical. He went to those Doctors and made the proposition to them. It was rejected by the Doctors, and they complain because they were not savage about it, but Dr. Chapman took the charitable view of it, and he says, "No, Mr. Butler, I will not hold it against you, according to your lights it may be all right, but not according to mine." He went to that Doctor, and he went to Dr. Merrell, and conscious of his purpose, recognizing the appointment by Ziegenhein, he argued to himself that after the vote is given, they will take the \$2,500, after the contract had been approved he came to both men, identically the same, said to both men identically the same thing—"I am a man of my word," except that Dr. Merrell had choked him off before he could say a word, when he saw the money, and he said to him, "Mr. Butler, I thought I made myself clear about this matter," and Dr. Merrell is an older and a firmer man, and the defendant knew that the second declining of the money was the end of the matter, with a man of his standing and his age and appearance, and he got up and walked out. He did not think so with Dr. Chapman. He thought that Dr. Chapman was a young man struggling for

a position in his profession in the community, in needy circumstances, according to his standing in the community, and he thought that by pressing it upon him that he would at last yield to the temptation, and having yielded, he would have him body and soul. And for another reason, if he had received that money, he would have been a lost man, and he would have had to do everything at the bidding and dictation of this defendant who had control and direction of many things besides that bid, as you gentlemen observed. He would have had control of many things, and in having control of many things, the defendant would have had control of him.

Now, the gentlemen ring the changes on Ziegenhein. I don't know that he has anything to do with this case. I think he is one of the most despicable characters that ever originated in American politics. It is a shame to mention his name in a public assembly, and if from their argument by reason of the fact that Dr. Chapman was appointed by Ziegenhein, he is a venal man and corrupt, the same logic will apply to Dr. Starkloff, because he was also appointed by Ziegenhein. Judge Krumrang the changes on that proposition. He says Dr. Starkloff was an honorable man. He did not have the audacity to say that Dr. Merrell was not an honorable man. He did not have the nerve to say that Dr. Chapman was not an honorable man; he did it by innuendo. When I have anything to say about a man, I say it to him, and I say what I mean, and I don't go about hiding my meaning by my phraseology and disguising the purport of my words. But he didn't do it. And why? Because he did not dare to do it. That man is one of the finest men in the city of St. Louis. His connection all through shows it to be true. His father-in-law was on the stand, a man whom no man in the city of St. Louis dares say a word against him. Do you suppose a man of that connection would trump up a case, or as they express it "manufacture" a case to put a man in the penitentiary? But as I stated, gentlemen, every action has a motive. What motive can Dr. Chapman have? There has not been a scintilla of evidence here to indicate that there is a feeling of hostility between

Dr. Chapman and the defendant. On the contrary, the evidence indicates that Dr. Chapman was exceedingly polite with him when he offered him the money. He simply suggested that "according to your lights that may be all right, but not according to mine." No indication of hostility there; no animosity shown here; the man was on the stand; he was a manly, intelligent witness. He gave one of the best cross-examiners in this country more than he bargained for, he was left severely alone after two or three tilts, and with all his ingenuity and magnificent ability and knowledge of the law, and practice of the law, he did not shake that Doctor's testimony one iota.

Now, Judge Krum tells you that this bill was passed and signed by the President of the Council on the 16th; Judge Krum is mistaken about that. The bill passed the Council and was signed on the 11th. That is the record of the Council in evidence. The bill was signed by the Mayor on the 17th. You don't suppose and I don't suppose that Mayor Wells—and he is an exceedingly intelligent man, and being considered so by Judge Krum—you don't suppose a man like him would sign a bill of this importance on one day's consideration. Hardly. It went to him on the 11th, and he signed it on the 17th.

The Court's instructions, gentlemen (I haven't time to read it) instructs you, and it is another method of distinguishing as to testimony—the Court instructs you that in considering the testimony of the defendant, or any witness, you have a right to take into consideration the interest that he has in this suit, the fact that he is the defendant, the interest of relationship of any of the other witnesses to him, and bring your judgment to bear on the testimony in the light of all these surrounding circumstances.

Now, gentlemen of the jury, this is an exceedingly important case; important not in the significance of the fact that any member of the Board of Health was intended to be corrupted, but significant for the reason that without the punishment of a crime of this character, it would be utterly im-

possible to maintain our free institutions; and, gentlemen, it won't do for us to say that that is a pessimistic view of this matter. It won't do to say that that is a moralist's view of the matter, because you know, and everybody knows that the greatest republic and empire that ever lived was beautifully said to have gone smiling to its grave. You gentlemen ought to consider this case, and when you make up your verdict, you ought to be able to place your hand on your heart as American citizens and as citizens of the State of Missouri, responsible for the integrity of the commonwealth, and the beautiful city on its eastern borders and be able to say "I have fought the good fight; my course is finished" and be conscientious at the same time when you say that.

MR. WILLIAMS, MR. MURRY AND MR. JOHNSON.

Mr. Williams asked the jury why one should give a man \$2,500 or another man \$2,400 for work which he was sure to get if he only waited long enough. Is there a man on the jury who believes that another bidder could have performed this work? The evidence is plain on this point. The contract was let on October 3, 1901, and the old contract expired on November 17. Now, the gentlemen of this Health Board have all told you, Doctor Starkloff, Mr. Hornsby, a man holding high position, and Drs. Chapman and Merrell themselves told you that such works as were necessary required a long time to build—the lowest estimate made of the necessary time was six months, while one man said it would take two years. Dr. Merrell's testimony cannot be considered as indicating that Butler was ever at Dr. Chapman's house, or cannot show that Butler offered Chapman money. Because he went to Merrell's, if he offered Merrell money, it proves nothing concerning Chapman. It can be considered only as showing the intent of the defendant. And he pointed out the apparent folly in expecting to secure the favorable vote of a board of six by approaching two men.

Mr. Murry said that there were several significant facts in this case which stood out boldly and he recited them in de-

tail and impressed upon the jury the necessity of considering them carefully. He referred to the testimony of Merrell, calling attention to the fact that Dr. Merrell's integrity had never been attacked and that were it not for the false tenderness and the timidity of juries more briberies than Butler's would have been brought to justice long ago.

The jury's duty is clear in the present case, although they had had from the defenders of the case a most ingenious use of the law as a shelter for the defendant; a most ingenious exposition of such facts as bear towards convicting Butler. First, the fact that no denial that money was offered has been entered as evidence; second, that Chapman had no apparent motive for making a false charge; third, that Claude Wetmore, from the stand, declared that Butler said of Chapman: "I guess I offered him a present." Present is Butler's name for 'bribe.' Who gives presents in this way? Two thousand five hundred dollars to one man, \$2,400 to another!

Mr. Johnson. This case was brought up here because it has some especial features which you especially are competent to try. This case is before you because you can give this defendant, Edward Butler, a fair trial, more so than a jury in St. Louis.

The power of justice is in this land in the body of twelve men that constitute a jury who are to use caution in their decision. Because the prosecution has endeavored to show that the defendant was a menace to law and liberty is no reason for his conviction, nor because the city newspapers have flaunted his supposed guilt before the world should you send him to prison. In the old common law the stealing of a six-pence was made a capital offense and in all probability Mr. Folk would advise the jury to put stripes on the defendant for a crime that even if he were guilty of was practically insignificant.

The inflamed condition of the public mind on the subject of bribery, or that the fact that this crime has been rampant in St. Louis should not convict Edward Butler. Any arguments by Circuit Attorney Folk on bribery in general, upon

the gravity of corruption among public officers, should be disregarded by you. Such argument is magnifying the offense charged, heaping the sins of many upon one head. Yes, they magnify the offense before you and will ask of you a heavy penalty; they will not say to you, Gentlemen, this is an old man of sixty-five, the father of a family, and in poor health!

The wrong by which a jury finds a defendant guilty, whether the offense be bribery or murder, if they do this erroneously or by mistake, the wrong is greater than the crime of bribery and as great as the crime of murder.

Mr. Johnson insinuated that the law was being used against Butler when an open fight was not dared, and he pictured the defendant as persecuted and hounded for purely political purposes. He contrasted Edward Butler and Chapman, and spoke of the alleged visit of September 16, saying that if no such visit was made the case falls to the ground. For the time of this visit only Chapman stands. Averring that it did not take place are the Butlers and McCarthy. If Dr. Chapman's testimony has been in any sense weakened or aspersed successfully, you are not to consider it, uncorroborated, sufficient for conviction. *Mr. Johnson* reviewed the evidence in detail and appealed for the acquittal of the "aged blacksmith."

MR. FOLK'S ADDRESS.

Mr. Folk. If the Court please, and gentlemen of the jury: Gov. Johnson has referred to the fact that this case is here on change of venue from St. Louis by reason of the prejudice of the inhabitants of that city against the defendant. He spoke of that very eloquently, yet afterwards he suggested that the defendant was a man of such standing, was a man so high in the esteem of his fellow citizens, and the thought occurred to me, and possibly it did to you, if so, why was this cause taken away from St. Louis by the defendant?

As one enters the portals of this Courthouse and raises his eyes above the doors, he may see engraved upon the stone these words: "Oh, Justice! When expelled from other habitations make this thy dwelling place." Those words were

put there in the long ago, but the spirit of God must have inspired them to fit this case. Justice is the same now as it was in the days gone by, when the sculptor cut those words on that stone, and when justice has been expelled from other habitations let this be its abiding place. Justice is all the State can ask for. Justice is all the defendant is entitled to. For you to do what the defendant's attorneys desire you to do would not be doing justice, it is not justice in accordance with their views, but justice under the law you should give. You are the ones to be satisfied of the defendant's guilt, and if so, let justice be done. You are the ones to be satisfied, and not the defendant's attorneys. I apprehend that no proof, no matter how strong, would satisfy the attorneys for the defense. In fact, their satisfaction would perhaps be greater if the evidence of the defendant's guilt were not so strong. The proof of the defendant's guilt is hardly ever satisfactory to the defendant's attorneys; but, gentlemen, it is you, and not the defendant's attorneys that must be satisfied.

Judge Williams refers to the fact that the defendant's attorneys come here in the same capacity as the attorneys for the State. In that he is in error. It is the province of a lawyer to defend any man, and I do not criticise the distinguished gentlemen for coming here to defend this man. That is their business. They are paid to do that, and they do nothing improper when they do it, because it is their profession. But, did you ever hear of a lawyer defending a guilty man? I imagine you have heard of few lawyers who would not defend a guilty man, if necessary; and it is right, it is proper under the ethics of the profession for a lawyer to defend a guilty man, but for a prosecuting attorney to prosecute a man he believes to be innocent would be one of the most infamous crimes of which a human being could be capable. An attorney for the defense may have to defend a man he knows to be guilty, but a prosecuting officer cannot honorably prosecute a man unless he believes him to be guilty, and cannot prosecute a man if he believes him to be innocent, because the

prosecuting officer represents the State and he likewise represents the defendant; it is his duty to vindicate the law, and see that the guilty are punished, and to see that no harm comes to the innocent. Our duty is the same as yours, gentlemen: You are the State of Missouri in this case. All the majesty, all the dignity of the State is in you, and we who appear here for the State appear merely in the discharge of our duties, appear as sworn officers and in the same capacity as you, with no motives to deceive you. We are engaged in a common purpose and in a common cause, the upholding of the law, and I would no more ask you to convict an innocent man than you would willfully convict an innocent man. We are simply the representatives of the State, as you are, and in considering this case, let us look at the facts fairly and impartially, you as jurors and I as Circuit Attorney.

I want no man under sentence of law, except that sentence be justified by what the man himself has done. I want no man convicted unless it be as the result of his own acts, and his own deeds.

They talk about public clamor. Why, there is no public clamor for the conviction of any innocent man. There should always be a public demand that the guilty be punished. If there were no demand in this county that one guilty of murder, or arson, robbery or bribery be punished, it would not be a desirable community to live in. What they think is public clamor perhaps is the public conscience, and if my friend Gov. Johnson will listen intently, he may hear with ever increasing distinctness, the beating of the public pulse as the awfulness and enormity of the crime of bribery is better known and understood.

Governor Johnson suggests that there is some ulterior purpose in this prosecution. If there be any other motive in it save that of enforcing the law, I do not know it. He insinuates that perhaps it may be ambition, or something like that. Why, gentlemen, a prosecuting officer who would use his place to prosecute any man for ambition's sake, would not be worthy of the place. I, gentlemen, hope the time will never

come when I may be so weak as to fail to do my duty under my oath of office to my State and to my God, for ambition or any other reason. Why, if there were some ulterior purpose, is it likely that one so mighty as this defendant would have been selected? Is it not more likely, gentlemen, that crimes like this would have been allowed to go by unnoticed as others have allowed them to go? I would rather do my full duty and retire to private life conscious of having done my best, than by neglecting my duty, hold the highest office in the land. There is more honor in honest private life than in high official position gained by sacrifice of principle. As long as I am Circuit Attorney any man who violates the law, be he high or be he low, must answer to the law for the penalty provided by the law. And yet they say it is an outrage to bring this man here because he is so great, because he is so powerful, it is an outrage! Is the law greater than Edward Butler, or is Edward Butler greater than the law? I think the law is greater than he.

The prosecuting officer who would fail to prosecute a case because of a defendant's power, ought to give way to let some other man take his place. The prosecuting officer who would use his position for any other purpose than the enforcement of the law, would not be worthy of the confidence the people placed in him. The man in public office, who uses his official functions to repay any private obligation is in the same position of the man who places his hand in the public treasury to pay a private debt. The individual holding public office has no right to use the public purse to pay his private debts or private obligations. He is put there to discharge his duty, to hold his office for the public good, and not for private gain.

Gentlemen, I am here in the discharge of what I conceive to be my duty, with no malice or ill will against this defendant. I assure you there is no personal feeling on my part against him, any more than any of you gentlemen might have. I abhor the crime that he committed, but against the man I have no feeling. I am merely here to assist you, to help you, to aid you in arriving at a just verdict under this

evidence, and in order to help you let justice abide with you.

Gentlemen, this is one of the most remarkable cases ever heard in any court. Is there any dispute that Edward Butler offered Dr. Chapman and Dr. Merrell \$2,500 apiece? There does not seem to be any. Is there any doubt in your mind that the first offer was made before the bid was approved? If there should be doubt in the mind of any juror, you stand alone among all that heard this evidence—

Mr. Rowe. We object to that statement for the reason that he does not know what is the opinion of all who heard the evidence.

The Court. Yes, I think that is going too far. I sustain the objection.

Mr. Folk. Is there any doubt in the mind of any juror that this money was paid before the bid was opened? I don't think there can be any doubt of that under this evidence. They talk about the 16th day of September. I think that Edward Butler went down to see Dr. Chapman on that day, or thereabouts. He does not fix it absolutely on that day, but about the 16th day of September, and that he went there appears by the evidence of Ella Vincil, who met him on one occasion; of Mrs. Chapman, who met him the first time that he came; and of Tillie Blattau who saw him the third time that he came, and who saw him on each of the three occasions. Then the evidence of Dr. Chapman is corroborated by these three persons, who testified, that Butler was there about the middle of September. Then you have the evidence of Dr. Merrell that Butler went there in September and offered him money. You have the evidence of Mrs. Merrell that she saw Mr. Butler come there.

Now they talk about this alibi, or "Butler-bi," or any other "bi" that you may call it. Perhaps it might be called a lame alibi, by reason of the fact that the defendant claims to have been lame. Mr. James J. Butler says that his father was laid up with the gout all during the month of September, after he came back from Washington. Well, perhaps he saw him in bed. You will remember, though, that the defendant

himself, stated that he got out of bed and went down to the St. Louis Sanitary Company, where this Board of Health was to meet. If he could get up out of bed and go down there, away down in South St. Louis, where the Board of Health was meeting, notwithstanding the gout, if he could do that, he could certainly have gotten up—

Mr. Rowe. We object to that for the reason that that statement is not warranted by the evidence. Mr. Butler made no statement that he went down to the Sanitary Works on the 16th of September; he went down there on the 28th of September.

Mr. Folk. I did not say he went down on the 16th.

The COURT. I did not understand that he fixed it on the 16th, but in the month of September.

Mr. Folk. Now, if Mr. Butler could, while so afflicted with this gout, get up and go away down there on the 28th of September, he could just as easily have gotten up on the 16th of September, and gone down to Dr. Chapman's. Mr. Butler says he did not go to anybody's house in September, except possibly his son's. In that you have six witnesses against him. You have Dr. Chapman, you have Mrs. Chapman, you have Ella Vincil, you have Tillie Blattau, you have Dr. Merrell and you have Mrs. Merrell, showing that he did go to the house of Dr. Chapman, and he did go to the house of Dr. Merrell.

It does not make any difference, gentlemen, to my mind, whether Mr. Butler was down at Dr. Chapman's exactly on the 16th day of September or not. It may be possible that James J. Butler and Edward Butler, Jr., are mistaken as to the time their father was ill. It may be possible that although ill, Mr. Edward Butler, Sr., got out of his bed and went to see Dr. Chapman. It may be possible that he did so a little later than the 16th of September. However that may be, is not of much importance. If you are satisfied that he did go there at any time before the bids were opened, then that is sufficient. And can you doubt that he did that very

thing, that he did go there to Dr. Chapman's before the bids were opened?

Why, they talk about motive, and say that Butler had the whole city of St. Louis in his grasp and it was not necessary for him to go to see Dr. Chapman and Dr. Merrell and offer them any money. This same argument, gentlemen, that they produced here, would show you that Mr. Butler never went to Dr. Chapman's house at all, because they could say, why should Mr. Butler go to Dr. Chapman's house? Why should he want to visit Dr. Chapman? Under this same argument they could show that he never went there at all, yet it is conceded that he did go there on two occasions, and what for, gentlemen? If there was no motive to bribe Dr. Chapman, what motive did he have to go there at all? If he had a motive to go there at all, didn't he have some motive that could be the subject of bribery? Why, the fact that he went there shows that he did have a motive, that he did have an interest, and that interest was touching his own pocketbook. That interest was by reason of being a stockholder in the Sanitary Company, by reason of receiving a salary from that Company, and by reason of having a contract with that Company, whereby his Company, the Hauling Company, was to get \$45,000 cash and \$17,000 a year. He had every reason to want this bid accepted, because if it were not accepted, his Sanitary Company could not exist; his Sanitary Company would have its great buildings there for no purpose and its splendid machinery could only be used for scrap iron. He had every motive, he had every reason for wanting this bid accepted, because the life of his Company depended on it. Without it the Sanitary Company must have died. Having that in his mind, knowing that there had been some talk about other bids—and you will recall this, gentlemen; I want you to observe this especially—at the time that Butler went to see Dr. Chapman, he did not know how many bids there were, because the bids had not been made. The bids, you will remember, were not made until October 1st; so when Mr. Butler went to see Dr. Chapman before that day, or Dr. Merrell, he

had no means of knowing that there would not be another bid, but in fact the evidence shows that he had every reason for thinking there might be other bids, by reason of the talk that had been going on. Now, lest we forget what this evidence is, let me just read to you what he said on that occasion, just briefly.

Dr. Chapman says, speaking of the first visit; "Mr. Butler was in the front room of my office, the front office, when I went in. I did not open the door; some one let him in, and I came in afterwards. We shook hands, and he began to speak about the garbage reduction works in South St. Louis, telling me what a very fine place it was, all of which I was aware of, for I had seen it. He told me of the very great expense the Sanitary Company had been to in putting up their works, how it was the most complete works in the United States. He then went on to speak of the contract and the ordinance that had been passed for a new garbage contract. He said, 'Our company intends to put in a bid and we would like to get it.' He said, 'In fact, we think it is due us. We have worked there for ten years and have made money, and the city rather owes it to us to throw it our way, if possible.' I said I knew that if there was more than one bid before the Board of Health, the Board of Health would be compelled to give it to the lowest bidder and then he went on to speak of the terms of the ordinance, and he says, 'You know under the terms of the ordinance it calls for \$50,000 cash bond to be put up by the party receiving the bid;' he says, 'this \$50,000 is intended to cover the faithful completion of the works. You know that we have a complete works down there, and therefore this cash bond will not have to stay up very long,' and he says, 'when the Board signs the release and the bond comes down, as soon as it is released I would like to come to you and make you a present of \$2,500, if you will vote for our Company to get this contract.' I says, 'Mr. Butler, I cannot do that; it would not be money that I could take and spend with any satisfaction to myself, and I can't do it.' He says, 'Doctor, I will see you again.' "

Then you will recall, after the bid was accepted, after the money was taken down, Mr. Butler went to Dr. Chapman again, showing what his purpose was, what his motive was on the former occasion in offering him this present. Gentlemen, right here let me say to you, you must apply your ordinary intelligence and your ordinary experience to the evidence as you have it here. If you were trying a man as jurors, say, and that man should come to call on you and offer you a large sum of money, he might say it was a present for you, yet what purpose could he have in offering you the money as a present? What reason could he have for making you a present of say \$10,000 or \$2,500? Why, you know it would be intended to influence you as a juror. It would be intended as a bribe. If a man who is on trial should go to the Judge of the Court and offer him \$10,000, why, what could be the purpose except to influence his official conduct? He might call it a present; he might call it by any other name that he chose, yet it would be bribery nevertheless.

Bribery, gentlemen, is a very insidious crime, hard to prove, because men do not, when they go out on a bribing expedition, they do not put placards up on the fences to say that they are going out to bribe. When they come to a man to bribe him, they do not call it by the plain brutal name of a bribe. They usually conceal it in flowers of expression or of speech, and possibly the words they say would convey the exact opposite from what they really mean. When you go to another, that other having some official matter before him, and offer him money without saying one word, yet it would be a bribe. You might say it was for something else, for a horse, say, and yet if there were no horse, the fact that you said it was for a horse wouldn't make it so, and wouldn't keep it from being a bribe. It makes no difference what they call it, it must be determined by what it is. You must consider the surrounding circumstances. You must determine by what the parties do, by what they say, by their actions, whether it is bribery or not, not by the mere words they use; that is the smallest part of it; so his calling this a present does

not keep it from being bribery in any respect or degree, because corruptionists always conceal their insidious motives and their nefarious schemes in that manner.

Now, Mr. Butler goes back to Dr. Chapman's house—Dr. Chapman says it was in the same room in which the previous interview occurred. Dr. Chapman met Mr. Butler; "When I went into the room," testified Dr. Chapman, "Mr. Butler was standing in the dim light; there were no lights in the house, but in front of my house is a gas light which reflects distinctly in my office. When I stepped in, he was standing close to the folding door separating the two rooms. I said to him, 'Good evening,' and he responded. He then peeped about the room and he said 'Doctor, I am a man of my word; I am here;' and he held towards me a roll of money. I said, 'Mr. Butler, I thought I made it plain to you that I would not take that money;' and he says, 'Doctor, you are not a millionaire.' I said, 'I could place every penny or more, but I wouldn't take it.' And he says, 'Doctor, you are one man in a million;' he says 'I hope you will not hold this against me.' I said, 'No, I suppose according to your lights it is right, but according to mine it is all wrong.' "

You do not have to depend entirely on Dr. Chapman's evidence; you have the evidence of Dr. Merrell practically to the same effect. Mr. Butler went to him in September and said to him, "You will not be reappointed on the Board of Health, and if I get this contract—no, that is not the word"—using Dr. Merrell's words, "When the contract is approved and becomes a law, I will make you a present of \$2,400." Dr. Merrell refused the offer; Mr. Butler left. Then Butler went again to Dr. Merrell's and had in his hand some greenbacks and gold. He was coming to pay the bribe that he had offered in the first instance. Dr. Merrell said: "I thought I made myself clear in the beginning—I will not take your money."

Now, gentlemen, isn't that evidence plain? Isn't that clear? You can't get evidence of bribery much clearer than that. Usually in proving bribery, witnesses who are contam-

inated themselves have to be used, because it is a crime in its nature that is done in secret with only the immediate parties present, and it is very fortunate indeed that in passing on so important a case as this, you have the testimony upon the main transaction of Dr. Chapman, who refused the bribe, who would not take the money that was offered to corrupt him, who comes before you uncontaminated, and the evidence of Dr. Merrell, who likewise would not be seduced from the ways of righteousness and the ways of honor. You have these men, unimpeachable witnesses, on whom to base your verdict.

Judge Krum in his argument asked, Why did not Dr. Chapman say something about this before? You can see, gentlemen, that Dr. Chapman is not in an enviable position here. These gentlemen have attacked him, they have raked him before and aft, and they have said that he manufactured the story, they have said that he did not tell the truth, they have tried to put him in a light before this jury as unworthy of belief. Wouldn't any man hesitate before he would get himself into that position? Wouldn't any man hesitate to tell a jury about a man like this who could get such a battery of lawyers as he has here to put a false light upon the evidence? Why, if Dr. Chapman had told this story in public, or brought an accusation against this defendant before he knew that a similar attempt had been made upon Mr. Merrell, can't you see the ferocious Judge Krum tearing him limb from limb because there was nobody else that was approached? Can't you see the gentlemen representing the defendant lapping up the blood, as it were, of the witness, because he had no one else who had been approached in like manner? And yet because he did not put himself in that position, because he did not put himself in the position of having himself ruined, having his character impaired by such attacks as have been witnessed here, because he did not do that, they say he ought not to be believed. But now, gentlemen, he is in a different position. Even with the evidence of Dr. Merrell as to a similar attempt, these gentlemen would still attack Dr. Chapman, but so far as I can see in this evi-

dence, gentlemen, Dr. Chapman has done nothing more than any honorable man would do. In this transaction he has manifested no malice. He has not indicated any desire to be unfriendly or prosecute. In fact, this case is not, according to the evidence, of his own making at all; the evidence shows that he was summoned before the Grand Jury and there told his story. There is nothing of petty malice here at all.

Governor Johnson talked of the evidence of Mr. Wetmore, this newspaper interviewer. Gentlemen, if you are to impeach witnesses by what newspapers say, very few witnesses could stand the test. Gov. Johnson evidently thinks newspapers are very reliable when they are against Dr. Chapman, but they are, apparently in his opinion, the most unreliable things on earth when they are talking about Edward Butler in St. Louis.

Mr. Rowe. We object to that statement.

Mr. Folk. It is exactly what Gov. Johnson said, as inconsistent as it seems.

The COURT. I think it is in reply to the statements of Governor Johnson.

Mr. Johnson. No, I said nothing of the kind.

Mr. Folk. I understood you to say that the newspapers had improperly influenced the public against Mr. Butler.

Mr. Johnson. Yes, I said that.

Mr. Folk. And the newspapers were of course reliable?

Gov. Johnson. No, I didn't say that. I said I had a very high regard for them.

Mr. Folk. Gentlemen of the Jury, you can see from this colloquy that has just taken place that you can't always depend on things you see in the newspapers. Why, Mr. Wetmore himself said that a great deal that Dr. Chapman said was not in that interview at all. He culled it down and wrote a story so that it would look well to the public so that it would read well. He didn't write it with the accuracy that one would write a will or a deed; he didn't write it with the same accuracy that one would in taking a deposition. It was merely intended by Wetmore as a newspaper interview, and

is substantially correct, that is all, and there is no substantial variance between that and what Dr. Chapman says, when you come to analyze it, because Wetmore says that Dr. Chapman told him that Butler had come there and offered him this money as a bribe, you will remember he said that although he didn't put it in the interview. He said that afterwards Butler came back there and tried to give him the money, tried to stuff it in his bosom, and that he would not take it, so you have the substance of it. These little sidelights and frills that Wetmore put in to please the public fancy had nothing to do with the case at all, and you can't contradict Dr. Chapman with anything like that, especially when newspapers are in such bad odor in the opinion of the defense.

But, gentlemen, Mr. Wetmore on the stand told a far more significant thing than what he said regarding what Dr. Chapman had told him. What he said as to what the defendant said to him is a thousand times more important in this case than the other statement. He said that in the talk with the defendant, the defendant stated: "Well, I guess I did offer them a present; I guess I did offer Dr. Chapman and Dr. Merrell a present." That was a confession as strong as any reasonable jury would desire in connection with the other evidence.

Gentlemen, can there be any lingering doubt in any man's mind under this evidence? Where can you find anything to base a doubt upon? You cannot doubt that Butler went down and offered the money; you cannot doubt, under all the circumstances, that he went before the bid was opened, because not only do the witnesses show that, but it would have been to his interest to have gone before the bid was opened. There was no particular purpose in his going after that, except in keeping his word and keeping his promise, and to carry the money. That was the only purpose of going after the bid was opened. His every motive, his every reason would be to go before.

Gentlemen, you have the motive, but it is not necessary to prove the motive. Why, ordinarily in bribery no motive can

be established, you can simply prove that a man paid money to an official for an official favor, that is sufficient. When we offer in this case to prove a motive, we have gone further than is necessary. They say he had no motive to do it at all. Why, gentlemen, I would hate to think that Mr. Butler would go around bribing without any motive. I have heard of cases where men would commit murder so often that they would just murder promiscuously, without any particular motive, but I never heard of a man who would love to bribe so well that he would simply go out bribing without any motive, or any purpose. So I cannot believe the theory of the defense. I cannot believe that Butler was so bad a man that he would want to go around before supper and just bribe somebody to keep his hand in. I believe he must have had some reason for it, some purpose, and this evidence shows to my mind very clearly what his purpose was, and that was to get that contract approved, to get that bid accepted to save the life of the Sanitary Company and to get that \$45,000 cash. There you have it plain and clear. There you have bribery made more distinctly than it can be in years—there you have the evidence of this crime that the gentlemen have been talking to you about, the crime of bribery.

Under our system of government, all law and all authority is vested in the people. The people rule. The people govern through their officials. Every authority, every power possessed by any official belongs, not to him, but to those he represents. If there be in the category of crimes one that is greater than all others, it is the offense of him in whom such a sacred trust has been reposed who sells it for his own gain and enrichment; and the man who bribes him and corrupts him is worse and is perhaps the most infamous of all men.

Gov. Johnson says there are other crimes worse than bribery. I doubt that proposition. The thief only plunders, while the giver of bribes robs the entire community. The man who murders may only take one life against the law, while the giver and taker of bribes poisons the very fountain of the law itself and makes the passage of laws a matter of

corrupt bargain and sale. The anarchist is at least openly opposed to all forms of government, while bribe panderers under the color of law and guise of respectability pollute the source of law, taint it at its very foundation and prostitute the law to venal ends. If all officials were corrupt, if all official acts were for sale, then the government itself would soon become the debauching tyranny of the few with wealth enough to purchase it. The giver of the bribe is worse than the taker, even as the debaucher is worse than the debauched, even as the tempter is worse than the tempted. If there were no one to bribe, there would be no bribery, and bribery, gentlemen, has its inception in just such conduct as you see here, of this defendant. In the offer of a bribe the defendant did all he could to corrupt these officers. That the State of Missouri did not have two officials debauched is not his fault. He did all that he could. If they had simply accepted his money, it would have been bribery, plain and complete. He did everything that he could do, and it was simply because those men were too honest to be corrupted, too honest to take his gold and sell themselves that it was not a complete act.

Benedict Arnold attempted to sell his country for gold, and he was no less a traitor that he did not succeed in his undertaking; and the defendant in attempting to bribe these two officials, cannot say in mitigation that he did not succeed, because he did all that he could to carry out the undertaking.

Gentlemen, official purity is the foundation stone of free institutions. The purity and probity of officials and the virtue of women must be preserved inviolate if our institutions are to live. If bribery is allowed and is tolerated, no government can long stand under it. It means the death of civic life and civic righteousness, and the country, the community, that tolerates it will soon find itself in a condition of debasement. It is necessary to preserve official probity and he who would attempt to debauch it must suffer punishment if it is to be preserved, because offers to corrupt officials are so many that unless there be punishment for every attempt you will have officials corrupted.

The children of Israel of old had the ark of the covenant of God, and whosoever would lay profane hands upon it must suffer death. The ark of the covenant of a free people is official virtue, and he who would corrupt it must suffer for his attempt. He must pay the penalty of the law.

The object of punishment is not revenge, gentlemen. It is to notify others of what they may expect if they commit similar crimes. We need an example for bribe givers and bribe takers. This defendant's conduct has shown that he is at least an offerer of bribes.

Governor Johnson talks to you and pleads for pity, yet when the defendant offered this money, he showed no pity for the public. He talks to you of mercy, yet when the defendant offered this money, he showed no mercy for the public. He talks to you about sympathy for the defendant, yet when he offered this money he showed no sympathy for the public. What he did there in offering the money to Dr. Chapman cannot be undone or obliterated even by the pathetic eloquence of Governor Johnson.

"The moving finger writes, and having writ moves on;
Nor all your piety, nor wit shall lure it back
To cancel half a line;
Nor all your tears wash out one word of it."

If this man only were concerned, some might say in the softness of their hearts, "let him go," but if he is allowed to go, what of the others who would feel privileged to violate the law? If maudlin sympathy influences jurors in their verdicts, then an invitation is extended to all to violate the law. If the law is not enforced by the courts, prosecuting officers and by juries, you might as well have no law at all.

The object of punishment is to notify all who would commit similar crimes as to what is in store for them. Gentlemen, you can by your verdict here notify all of those who would give or take bribes how a Boone County jury views the question.

Ancient mythology tells of a being by the name of Prometheus, who for some fancied injury to the Gods was con-

damned to be bound to a rock for endless ages, and eagles would come each night and pluck a piece out of his liver, and by some magical process it would be reproduced again, thus in endless agony and torture he was condemned to remain. The giant Hercules came along and slew the eagle and set Prometheus free. A community bound down by the chains of corruption can be set free by a verdict in a case like this. "You are the Hercules; St. Louis is the Prometheus. You can set her free.

Gentlemen, if under evidence like this a defendant is not punished it is a license to all to go ahead and fear no harm. Not only officials in St. Louis will become corrupt by example, but all over the State:

"At length corruption, like a general flood,
Shall deluge all, and avarice
Creeping on spread like a low-born mist and
Blot out truth and honor."

Gentlemen, you can by your verdict do much to bring about a better condition of affairs. I feel my responsibility in a case like this, gentlemen. I feel that perhaps I might say something that I have not said to remove all doubt from some hesitating mind. I feel perhaps I may have overlooked some little particle of evidence that I could have called to your attention, or that some remark that I might have made may affect some juror to the contrary. If there be upon this jury any one who doubts, let me say to you, can you afford to set the stamp of your approval upon such conduct as you see here? What is the use of teaching that honesty is the best policy if a man like this defendant, as the evidence shows he is, is not made to suffer the penalty of his crime. What is the use of teaching your boys that it is better to be honest, if one guilty of such conduct is not made to pay the penalty of the law?

The people of this State, the people of this county, the students of this great University are awaiting an answer to the question. Gentlemen, you can, by your verdict, send a message of encouragement and cheer to the givers of and

takers of bribes, or you can make it a message of stern and terrible condemnation. What will your message be?

Governor Johnson speaks to you for the freedom of one man who has violated the law; I plead with you for the civic righteousness of many men. Governor Johnson pleads with you for the liberty of one who has incurred the penalty of law; I plead with you for the honor of the entire State. He pleads with you for Edward Butler; I plead with you for the State of Missouri. He would have your hearts in tune with Edward Butler; I would have you remember your God, your home, your State. Oh Missouri! Missouri! I am pleading for thee!

Is the State of Missouri greater than Edward Butler or is Edward Butler greater than the State of Missouri? What is the answer of a Boone County jury?

I ask you, gentlemen, in the name of the State, in the name of the city of St. Louis, in the name of this county and all you hold dear within it, to vindicate the law by your verdict in this case with such force as shall put an end to bribery for years to come in this State. I ask you this because it is just and because it is right.

“Right is right, since God is God,
And right the day must win;
To doubt would be disloyalty;
To falter would be sin.”

Gentlemen, the people of this State with hearts bowed down are waiting breathlessly your verdict—

“With all their hopes of future years”—

Mr. Johnson. I don't like to interrupt the gentleman, but I don't think it is appropriate to state that anybody is awaiting this verdict with interest.

Mr. Folk. It is the example I am speaking of. I thought I made that plain.

The COURT. I think the Appellate Courts have recognized the right of the prosecuting attorney to discuss the necessity of enforcing the law.

Mr. Johnson. Yes, but to say they are awaiting for this verdict I don't think is proper.

The Court. He cannot go further—that I have stated.

Mr. Folk. Gentlemen, you have heard the evidence; you have seen the witnesses and you are competent to judge. The Almighty has so ordained it that nothing a man can do can remain secret or hidden from his fellowman. Every crime or sin in secret makes its impress on a man's face. (Pointing to Butler.) Every sinful thought, every awful deed makes a mark here or a mark there, until you can look into a man's face and tell the history of his past. If that past be one of debauchery, the countenance shows; if it be one of benevolence, the face reveals. There is the mirror of the soul. Look at these witnesses that have been brought here for the State and defendant. You can tell from their faces what they are; you can tell what their past has been, and this, with other evidence before you, can leave no doubt in your minds as to this defendant's guilt. So I say to you, that the people of this State, with hearts bowed down, with all their fears, with all their hopes of future years, are breathlessly awaiting your verdict.

Gentlemen, may you strike one blow deep, effectual and forever at bribery, in the name of God and the State of Missouri.

Gentlemen, the case and the honor of the State are in your hands.

JUDGE HOCKADAY gave instructions that the jury were to remain in charge of the sheriff at all times. They were not to have newspapers, books or literature of any sort; were not to talk about the case, and were charged to report any attempt on the part of any one else to talk with them about it.

THE VERDICT AND SENTENCE.

November 14.

The court opened at 8 a. m. and the sheriff was ordered to bring in the Jury. The jurors entered and the foreman (Mr. Hickman) handed a paper to the sheriff who passed

it to the Judge who read it aloud: "We, the Jury, find the defendant, Edward Butler, guilty as charged and assess his punishment at imprisonment in the penitentiary for a term of three years."

The *Jury* were then polled and each member, as he was asked, is this your verdict? replied, it is.¹⁸

Mr. Gentry asked for a new trial for twelve reasons, the chief ones being that Mr. Maroney, in addressing the jury, used an improper expression; that Judge Hockaday erred in overruling the motion to quash, and that Mr. Folk used improper language in addressing the jury.

JUDGE HOCKADAY. The motion is overruled. I think the prisoner has received a fair and impartial hearing.

JUDGE HOCKADAY (after calling Butler to the bar). The jury in this case, after hearing all the evidence, have found you guilty and assessed the punishment at three years in

¹⁸ According to the emphatic statement of four members of the jury, Ed. Butler convicted himself on his own testimony. They said that, although he appeared for the defense, he was the best witness for the State that went on the stand. "He practically admitted his guilt," said one member of the jury. "His own testimony and the striking, convincing argument of Attorney Folk were the chief factors in influencing the jury in making their decision."

"The jury was unanimously convinced of the fact that the defendant was guilty as charged," said John F. Wilhite, a member of the jury, in discussing their deliberations. He said that when the jury retired from the court room they were ready to render a verdict at once. Several said: "Let's vote and go home." Mr. Wilhite insisted that, in justice to the defendant, the guilt or innocence should at least be discussed, and the evidence reviewed. The jury on their first ballot were unanimous for conviction. The only delay was as to the question of penalty. On the first ballot eight members were for sentencing the defendant to five years. One was for a term of one year and a fine of \$1,000, and two were for a term of three years. On the second ballot the jury was unanimous for a sentence of three years, and such was the verdict. All that saved the defendant from a verdict sentencing him for a term of five years was that there were two aged men on the jury: Thomas H. Hickman of Cedar Township, who was the foreman of the jury, and B. H. McKimson of Columbia Township. They sympathized with the defendant on account of his age, and would not agree to five years' sentence. It was directly through their influence that the jury determined upon a penalty of only three years.—St. Louis *Globe-Democrat*, November 15, 1902.

the penitentiary. I have endeavored to extend to you a perfectly fair trial, such as the law prescribes for every accused citizen. The jury was the best Boone County could afford, and, after considering all the evidence, have found you guilty. It now becomes my duty to sentence you according to the verdict. Have you anything to say why sentence should not be passed?

Butler. I have nothing to say, your Honor, except that I am not guilty of the charge as preferred.

JUDGE HOCKADAY. The Jury has passed upon that question and with that the Court has nothing to do. In accordance with their verdict, I sentence you to imprisonment in the State penitentiary for a term of three years.

An appeal was taken by the prisoner to the Supreme Court of the State. In January, 1903, that tribunal ruled that the removal of garbage from a city was not a measure relating to the public health but was a public work, which under the charter of the city was under the jurisdiction of another city body, viz, the Board of Public Improvements. Therefore as the Board of Health had no right to make a contract for the removal of garbage, it was not bribery to offer money to Dr. Chapman, even though the alleged briber got the contract and did the work for years and the city paid him or his company the money it had agreed to pay on the contract. The court also held that the jury was wrong in finding that the offer of the money was made after the Mayor signed the ordinance giving the Board of Health power to award the contract for removing garbage. The jury should have decided that the Mayor did not sign it until a few hours later. And this being so it was not bribery to offer Dr. Chapman money for his vote before he had been legally authorized to vote on the question. The Judges who made this decision were James D. Fox, James B. Gantt and Gavon D. Burgess.¹

¹ See 178 Missouri Reports, 272.

THE TRIAL OF JULIUS LEHMAN FOR BRIBERY, ST. LOUIS, MISSOURI, 1903.

THE NARRATIVE.

In the summer of 1899, there was introduced into the Municipal Assembly of St. Louis, a bill to authorize the making of a contract with the city for the lighting of its streets, alleys and public places. Early in October a number of members of the lower house—the House of Delegates—held a meeting to discuss the bill with reference to the persons who were interested in its passage, and the money that could be obtained from them for voting in its favor. The names of this motley and unsavory crew were: Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles Denny, Adolph Madera, John Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, Edward E. Murrell, John K. Murrell, John Helms, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn, George Robertson, Henry A. Faulkner, and Julius Lehman. There was much debate as to the price for which they would sell their votes. The result was nearly an even decision, one-half thinking that \$100,000 should be demanded and the other believing that \$50,000 was sufficient. After a long discussion, a compromise was effected, and it was decided that \$75,000 should be the price asked.

John K. Murrell was chosen to act as agent for the combine, and was also instructed to locate the men who were behind the measure. At the next meeting of the combine Murrell was obliged to report that he was unable to find out the name of the capitalist who was interested in the bill, and so the delegates, when it came before them a few days later, voted unanimously against it. This forced the hand of the promoters, for at the next meeting of the combine, Delegate Gutke came into the meeting and exhibited \$20,000 in cash; said that he had located the "angel," but that the boys

would not get more than \$47,500. He had been given a part of this, and the remainder would be paid as soon as the bill was passed. The meeting told Gutke to take the money back to whoever gave it to him and tell the person that Murrell was the one with whom he must deal and that they would never think of listening to a proposition that involved only \$47,500.

That afternoon Edward Butler called at Murrell's office and said: "I have got the \$47,500 for the boys if they pass that lighting bill." "But they want \$75,000," Murrell told him. "Tell them that they will get \$47,500 and not a cent more," he answered. Butler urged Murrell to do what he could toward bringing about an understanding, and on leaving, said he would be on hand at a meeting of the House of Delegates which was to be held that night.

That night, as he had promised, Butler appeared in the chamber of the House of Delegates and, after a conference with several of the members the word was passed around that it was all right; that they were to vote for the bill, and to go to Lehman's house to a birthday party he was giving, after the adjournment. Then the House was called to order; Delegate Lehman made a motion to reconsider the previous vote, which was adopted; and the bill was then passed, all the "combine" voting for it. They all met that night at Lehman's home; were called one by one into a back room, when Delegates Kelly and Bersch, who had brought the money there, gave each man his share, \$2,500.

The members of the combine, except John K. Murrell, who was accepted as a witness for the State, were jointly indicted for soliciting and accepting a bribe. They were granted separate trials, and when Julius Lehman, who had already been convicted of perjury (see *ante*, p. 419), was placed on trial, John K. Murrell told the story in full and was corroborated by his colleagues, Tambllyn, Robertson, Schumacher and his brother Edward Murrell, who had been Speaker of the House. The proof was so clear and the crime so evident that Lehman's lawyers offered no evidence in rebuttal, and did not even make a plea to the jury in his behalf. The case was submitted to the

JULIUS LEHMAN.

triers; after the instructions of the Court and a speech by Prosecuting Attorney Folk, the jury retired and returned in a few minutes with a verdict of guilty and a sentence of imprisonment in the penitentiary for the term of seven years.

THE TRIAL.¹

In the St. Louis Circuit Court, Criminal Division, July, 1903.

HON. O'NEILL RYAN,² Judge.

October 4, 1902.

Today the grand jury brought into court an indictment against Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn, and Henry A. Faulkner, members of the House of Delegates, for accepting a bribe to pass a bill for the lighting of the streets and public places of St. Louis.³

¹ *Bibliography.* "From the Circuit Court of St. Louis. Division No. 9. O'Neill Ryan, Judge. State of Missouri, Respondent, v. Julius Lehman, Appellant. Filed February 13, 1904. John A. Green, Clerk. Record No. 12188."

St. Louis *Globe-Democrat*, *Post-Dispatch* and *Republic*, July 15 and 16, 1903.

And see *ante*, p. 419.

² See *ante*, p. 419.

³ The grand jurors of the State of Missouri within and for the body of the city of St. Louis, now here in court duly impanelled, sworn and charged upon their oaths present:

That on or about the 28th day of November, in the year one thousand eight hundred and ninety-nine, the city of St. Louis was a municipal corporation in the State of Missouri aforesaid, and that the legislative power of the said city of St. Louis was by law vested in a Council and House of Delegates, styled the Municipal Assembly of St. Louis, the members whereof were elected by the citizens of said city, and that before any measure and proposition could become a law and ordinance of said city, it was necessary and requisite that the same should be duly passed and enacted by a majority vote of the members of said Council and House of Delegates respectively, and approved by the Mayor of said city; that at the said city of St. Louis and on or about the said 28th day of November, in the year one thousand eight hundred and ninety-nine, Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman,

October 13.

Julius Lehman asked for a separate trial, which was granted, whereupon he pleaded *not guilty*.

Joseph W. Folk,⁴ Circuit Attorney, for the State.

C. H. Krum,⁵ *Thos. J. Rowe*,⁶ *Willis H. Clark*⁷ and *John A. Gernez*, for the Prisoner.

Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner were then and there public officers of the said city of St. Louis, to-wit: Members of the said House of Delegates and of the said Municipal Assembly of St. Louis, duly elected and qualified and were then and there acting in the official capacity and character of members of said House of Delegates and of the said Municipal Assembly; that there was then and there pending and undetermined before the said Municipal Assembly for the consideration, opinion, judgment and decision of the members thereof in the said House of Delegates and before the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner in their said official capacity and character as members of said House of Delegates and of said Municipal Assembly of St. Louis a certain measure, matter, cause and proceeding in the nature of a proposed ordinance of the said city of St. Louis, designated and known as Council Bill No. 44, wherein and whereby it was proposed that the city of St. Louis (by ordinance duly passed and enacted by the said Municipal Assembly, and approved by the Mayor of said city) should authorize and direct the Board of Public Improvements of said city of St. Louis to light certain designated streets, avenues, sidewalks, alleys, wharves and public grounds and squares of the said city of St. Louis after the first day of January, one thousand nine hundred, and should designate the fund out of which the cost thereof should be paid; that it then and there became and was the public and official duty of the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner as members of said House of Delegates in their official character and capacity as aforesaid to give their vote, opinion, judgment and decision upon the said measure, matter, cause and proceeding, and for or against the said proposed ordinance without partiality or favor; that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright,

July 1, 1903.

The application of the State for a special jury was granted by the Court.

John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, well knowing the premises, but unlawfully and corruptly devising, contriving, scheming and intending to prostitute, betray and abuse their trust and to violate their duty as aforesaid as members of the said House of Delegates and of the said Municipal Assembly, did, at the said city of St. Louis, and on or about the said 28th day of November in the year one thousand eight hundred and ninety-nine, unlawfully, corruptly and feloniously, directly and indirectly, solicit, propose, procure, accept and receive a certain promise and undertaking to make a certain gift, consideration, gratuity and reward to them, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner under an agreement that their vote, opinion, judgment and decision (as public officers as aforesaid and as members of the said House of Delegates and said Municipal Assembly) and should be given for and in favor of the passage and enactment of the said measure, matter, cause and proceeding and for and in favor of the passage and enactment of the said proposed ordinance of the said city of St. Louis then and there pending and brought before the said House of Delegates and before them, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, in their said official capacity and character as members of the said House of Delegates as aforesaid, and under an agreement that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner would and should perform their said public and official duty in the premises without partiality and favor, and otherwise than according to law; and that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner did then and there unlawfully, corruptly and feloniously solicit, propose, procure, make and enter into a certain corrupt bargain, agreement and covenant with one Edward Butler by and under which said corrupt bargain, agreement and covenant

July 14.

The *prisoner's counsel* ask for a change of venue on account of the prejudice of the inhabitants of St. Louis, which application is overruled by the Court, and the following special jurors are sworn to try the case: Frank W. Aufderheide, George M.

a large sum of money, to-wit: The sum of \$47,500 lawful money of the United States was by the said Edward Butler placed in the hands of the said Charles F. Kelly, who was then and there a member of the House of Delegates and of the said Municipal Assembly, duly elected and qualified, the said Charles F. Kelly having been theretofore selected, designated and appointed by the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, as their agent and representative to confer with, arrange with and receive from the said Edward Butler the said sum of \$47,500, upon the express promise, undertaking, agreement and understanding by and between the said Edward Butler and the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, in pursuance of the corrupt bargain, agreement and covenant aforesaid that the said money was a bribe to the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner as public officers as aforesaid and in their official capacity and character as aforesaid, that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner as members of the House of Delegates and in their said official capacity and character should and would give their vote, opinion, judgment and decision for and in favor of the said measure, matter, cause and proceeding and for and in favor of the passage and enactment of the said proposed ordinance when the same might and should be brought before the said House of Delegates and before them the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, in their said official capacity and character as aforesaid; and upon the express promise,

Griffen, Alfred C. Carper, William Hales, Charles E. Chapman, Adolf G. Hildebrand, Philip S. Child, Edward P. Horner, Arthur J. Goehner, John L. Moore, Daniel G. Green and Cornelius G. Mueller.

The *Prisoner's Counsel* filed a plea in abatement which was overruled by the Court.

Circuit Attorney Folk presented the case to the jury. He

undertaking, agreement and understanding that in the event the said proposed ordinance should be passed and enacted by the said Municipal Assembly, that is to say by the said Council and said House of Delegates respectively, the said sum of \$47,500 should be wholly delivered and paid over to them, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, as a gratuity, reward and bribe to them for their votes as members of said House of Delegates for and in favor of the passage and enactment of said proposed ordinance; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

And the grand jurors aforesaid upon their oath aforesaid do further present: That on or about the 28th day of November, in the year one thousand eight hundred and ninety-nine, the said city of St. Louis was a municipal corporation in the State of Missouri aforesaid, and that the legislative power of the said city of St. Louis was by law vested in a Council and a House of Delegates styled the Municipal Assembly of St. Louis, the members whereof were elected by the citizens of said city, and that before any measure and proposition could become a law and ordinance of said city, it was necessary and requisite that the same should be duly passed and enacted by a majority vote of the members of said Council and House of Delegates respectively, and approved by the Mayor of said city; that at the said city of St. Louis and on or about the 28th day of November, in the year one thousand eight hundred and ninety-nine, Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner were then and there public officers of the said city of St. Louis, to-wit: Members of the said House of Delegates and of the said Municipal Assembly of St. Louis, duly elected and qualified and were then and there acting in the official capacity and character of members of said House of Delegates and of said Municipal Assembly; that there was then and there pending and undetermined before the said Municipal Assembly for the consideration, opinion, judgment and decision of the members thereof

said that the State would prove that a combine had been established by members of the House of Delegates to extort money for the passage of certain bills. When the lighting bill came before the House in November, 1899, the combine, of which the prisoner was a member, held a meeting and decided to vote the bill down, in order to find out who was behind it. The bill was voted down November 21, 1899, and subsequently the combine

in the said House of Delegates and before the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner in their said official capacity and character as members of said House of Delegates and of said Municipal Assembly of St. Louis, a certain measure, matter, cause and proceeding in the nature of a proposed ordinance of the said city of St. Louis designated and known as Council Bill No. 44, wherein and whereby it was proposed that the said city of St. Louis (by ordinance duly passed and enacted by the said Municipal Assembly and approved by the Mayor of said city) should authorize and direct the Board of Public Improvements of said city of St. Louis to light certain designated streets, avenues, sidewalks, alleys, wharves and public grounds, and squares of the said city of St. Louis after the first day of January, one thousand nine hundred, and should designate the fund out of which the cost thereof should be paid, that it then and there became and was the public and official duty of the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, as members of said House of Delegates in their official character and capacity as aforesaid to give their vote, opinion, judgment and decision upon the said measure, matter, cause and proceeding and for or against the said proposed ordinance without partiality or favor; that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner well knowing the premises, but unlawfully and corruptly devising, contriving, scheming and intending to prostitute, betray and abuse their trust and to violate their duty as aforesaid as members of the House of Delegates and of the said Municipal Assembly, did, at the city of St. Louis, and on or about the 28th day of November, in the year one thousand eight hundred and ninety-nine, unlawfully, corruptly and feloniously, directly and indirectly solicit, propose, procure, accept and receive a certain promise and under-

members held a meeting and decided to demand \$75,000 to pass the measure. The State would prove, likewise, that Charles A. Gutke met with the combine and announced that he had \$20,000 in his pocket for the passage of the bill, but that this sum was refused by the members. Gutke thereupon left the room, followed by John Helms, and the latter saw Gutke meet Edward Butler and hand him a package.

taking to make a certain gift, consideration, gratuity and reward to them, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner under an agreement that their vote, opinion, judgment and decision (as public officers as aforesaid and as members of the said House of Delegates and said Municipal Assembly) should be given for and in favor of the passage and enactment of the said measure, matter, cause and proceeding and for and in favor of the passage and enactment of the said proposed ordinance of the said city of St. Louis then and there pending and brought before the said House of Delegates and before them, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, in their said official capacity and character as members of the said House of Delegates as aforesaid and under an agreement that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner would and should perform their said public and official duty in the premises without partiality and favor and otherwise than according to law and that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner did then and there unlawfully, corruptly and feloniously solicit, propose, procure and make and enter into a certain corrupt bargain, agreement and covenant with some person or persons to these grand jurors unknown by and under which said corrupt bargain, agreement and covenant, a large sum of money, to-wit: The sum of \$47,500 lawful money of the United States was by the said unknown person or persons placed in the hands of said Charles F. Kelly, who was then and there a member of the said House of Delegates and of said Municipal Assembly, duly elected and qualified, the said

J. K. Murrell was then appointed agent of the combine, to see Butler and demand \$75,000. Butler said \$47,500 was all that would be paid for the passage of the bill. The State would prove that Butler was on the floor of the House at the next meeting, November 28, and that he succeeded in persuading the combine to accept the \$47,500. The House records

Charles F. Kelly having been theretofore selected, designated and appointed by the said Edmund Bersch, Otto Schumacher, John H. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner as their agent and representative to confer with, arrange with and receive from the said unknown person or persons the said sum of \$47,500 upon the express promise, undertaking, agreement and understanding by and between the said unknown person or persons, and the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, in pursuance of the corrupt bargain, agreement and covenant aforesaid, that the said money was a bribe to the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner as public officers as aforesaid and in their official capacity and character as aforesaid, that they, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner as members of the House of Delegates and in their official capacity and character should and would give their vote, opinion, judgment and decision for and in favor of the said measure, matter, cause and proceeding and for and in favor of the passage and enactment of the said proposed ordinance when the same might and should be brought before the said House of Delegates and before them, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, in their said official capacity and character as aforesaid; and upon the express promise, undertaking, agreement and understanding that in the event the said proposed ordinance should be passed and enacted by the said Municipal Assembly, that is to say, by the said Council and House of Delegates respectively,

showed that the bill was reconsidered and passed on the motion of Julius Lehman. Charles F. Kelly and Edmund Bersch went to get the money, which was taken to Lehman's house and divided, each member of the combine receiving \$2,500. The members had gone to Lehman's house under the pretext that a birthday party was to be given.

THE WITNESSES FOR THE STATE.

John H. Higdon. Am a Deputy Circuit Clerk, have the custody of the records of the election to the House of Delegates. Edmund Bersch, Otto Schumacher, William Vogel, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, Ed. L. Murrell, John K. Murrell, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jeremiah J. Hannigan, William M. Tambllyn and George F. Robertson were elected to the House of Delegates in 1899. Vogel was later unseated by the house and his seat given to John A. Sheridan.

Charles R. Graves. Am Sec-

retary of the City Council and have charge of the official journal of that body. On July 14th, 1899, the Board of Public Improvements transmitted and recommended to the City Council an ordinance authorizing and directing the Board to light certain streets, etc., after January 1st, 1900, and designating the fund out of which the costs should be paid. This bill was numbered 44; and said bill was then read the first time. On July 21st, 1899, the bill was read a second time and referred to the Committee on Public Improvements. On August 1st, 1899, the committee reported that they had considered the bill and re-

the said sum of \$47,500 should be wholly delivered and paid over to them, the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Emil Hartman, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Julius Lehman, Charles F. Kelly, Jerry J. Hannigan, William M. Tambllyn and Henry A. Faulkner as a gratuity, reward and bribe to them, for their votes as members of said House of Delegates for and in favor of the passage and enactment of said proposed ordinance:

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State.

⁴ See *ante*, p. 341.

⁵ See *ante*, p. 501.

⁶ See *ante*, p. 422.

⁷ CLARK, WILLIS HENRY. Born Kent County, Michigan, 1861; removed to Missouri in 1880. Admitted to St. Louis Bar 1888; practiced law in St. Louis since then. Judge St. Louis Court of Criminal Correction, 1898-1902.

ported with recommendation. On August 7th, 1899, the bill was laid over until the first meeting in October, 1899. On Oct. 10th, it was laid over until the 17th, and on the 17th it was ordered to engrossment, and on the 27th it passed the Council. It was then sent to the House of Delegates and passed the House of Delegates November 28th, 1899. After it was signed by the President of the Council and the speaker of the House, it was approved by the Mayor on December 8th, 1899.

Patrick J. Fitzgibbon, Registrar of St. Louis, proved that the prisoner and the other members of the House of Delegates had taken the oath required of them.

Joseph N. Judge, Am clerk of the House of Delegates. On October 31st, Council Bill 44 was read the first time in the House of Delegates and was afterwards read a second time and referred to the Committee on Public Improvements. On November 21st, 1899, the committee reported and recommended that it do not pass. The bill was read third time and failed to pass by the following vote: 8 in favor, 18 against. The 16 members named in the indictment voted against it. On November 28, 1899, on motion of Julius Lehman it was reconsidered and passed by a unanimous vote.

John K. Murrell. Was a member of the House of Delegates from 1899 to 1901, while the Lighting Bill was pending before the Assembly there were meetings of members of the House in reference to it. One on Tenth street, between Pine and Olive, back of Judge Walker's court, sometime the first

part of October, 1899. Edmund Bersch, Otto Schumacher, John Sheridan, Charles Denny, Adolph Madera, John Schnettler, Emil Hartman, Charles Gutke, Louis Decker, Edward E. Murrell and myself. John Helms, Julius Lehman, Charles F. Kelly, Jerry Hannigan, William M. Tambllyn, George Robertson were present. There was a general discussion over the bill to see what money could be gotten out of it. Kelly thought we ought to get \$100,000 for the passage of the bill. Julius Lehman wanted \$75,000. Bersch wanted \$100,000. There was no price set on it that night. I was appointed to see what could be gotten out of the bill. My instructions were to see what we could get out of the bill and to see who was back of it. I saw Mr. Craney; he was interested in this Welsbach business, and he said he had nothing to do with it and did not know who was connected with it, and I reported back to the boys and told them about it. The meeting at which I reported back was on the floor of the House of Delegates; the defendant was present. No action was taken at that meeting. The next meeting was on the evening of the 28th of November. The same persons just mentioned were present at that meeting. Mr. Gutke came in and said he had \$20,000 and he could get \$47,500 for the passage of the bill. Mr. Robertson then stated, "Mr. Gutke, take this money back to the party and have the man come and see the party appointed on the bill." Then there was a price of \$75,000 set on the bill that evening by the vote of the members there. After the

price was set upon it Mr. Gutke left with the money, and what he done with it I don't know. About seven o'clock Mr. Ed Butler came up to my office and wanted to know what we were going to do with the bill. I told him I didn't know, he said, "I was instructed to come and see you, that you could tell me all about it" Told him the boys wanted \$75,000 for the passage of the bill. He said, all you will be able to get will be \$47,500. I said that would not do and I would report back to the members at the hall; that was about meeting time. I went back and reported to the Delegates and they refused to accept it. This defendant was present. Mr. Butler said he would come down to the hall and I went outside and told him they refused to accept. I came back and told them I saw Butler, they refused to accept anything less than \$75,000; then I had no further interest in the matter at all and took my seat. Afterwards Lehman came back and said we had better take that \$47,500. The bill was passed that evening. The motion to reconsider was made by Mr. Lehman. After the meeting I went up to Lehman's house to get my share of the money, about ten or half past ten the 28th of November. Mr. Lehman, Hartman, Tamblin and four or five others were there. We waited until Mr. Kelly came with the money. Each man was called in and got his share of the money, \$2,500 apiece. After I got my money I stayed possibly twenty minutes. I left with my brother and Bill Tamblin. Lehman was there all the time the lighting bill was in the House of Delegates. Leh-

man told me that everything was all right, the money was up and to pass the bill; that Kelly had everything fixed.

Cross-examined. The first suggestion about this lighting bill came along in August, 1890, but any meeting that was held was along in October, the latter part of September or October. The door was always kept locked. John Helms was the sentinel. At the first meeting of the combine Hannigan and Sheriden were there. Schnettler was there too. Schnettler was a very quiet man and never had much to say about anything. He was not one of those that was talking about \$75,000 and \$100,000. He was always satisfied with what the majority agreed to.

Mr. Butler came up to my office the evening of November 28 and wanted to know what we were going to do with the bill. I told him I didn't know. Well, he said he was told if he came to see me I could tell him; I told him then that the boys wanted \$75,000 for the passage of that bill; he said, "They won't be able to get it, they will be able to get \$47,500 and that is all." I told him they would not accept it and I would report back to them, and he said he would come back to the hall; I said it was no use, that he had better stay on the outside, and I would report to him; I went out to him and told him they would not accept it.

When I came back to make that report after meeting Mr. Butler I met the other seventeen on the floor of the House.

Did not call them together and tell them all together, they all came themselves.

I told Bersch, Kelly, Lehman,

Helms, Robertson, Madera and Hartman. There may have been others. Had nothing to do with any further negotiations. When the word was passed to vote for the bill, that it was all right I voted. At the time I voted did not know what arrangements had been made. They said everything was all satisfactory; they were going to accept the \$47,500. Bersch came and told me the money was up and everything was all right. Think Kelly spoke to me about it, too. Everything was hustle and bustle there that night, and Lehman told me to come up to the house after everything was over. Was not the first one to arrive at Lehman's house. Lehman, Tamblyn, Madera and a few others were there when I arrived. Sheridan or Helms I don't think were there; think Schnettler and Decker, Hartman and Madera. Mr. Helms got there after I did; Mr. Bersch, Mr. Kelly and Mr. Sheridan I know came in after me. Those are the only ones I remember. Mr. Albright was not at any of these conferences in relation to this bill. He was not in the combine; never attended any meetings. It was understood he should vote for the bill and would be taken care of—would be taken care of. He was not at Mr. Lehman's house, but he got his \$2,500. At the meeting at Lehman's three went into the back room to divide the money. Kelly and Ed. Bersch and John Helms; Helms did the checking off on a slip of the House. I went in when they called my name. Am not included in the indictment in this case. There are no prosecutions pending against me but one indictment,

the Suburban. Have received no assurance or promise, no inducement has been held out to me of mitigation or exemption of punishment for the offenses committed by me in consideration of my testimony. Mitigation or exemption of punishment depends on what the prosecuting attorney does; I do not know what he will do, he has never given me any assurance of any kind. I might expect a whole lot, the question is what I will get.

William M. Tamblyn. Was a member of the House of Delegates in 1899-1901, was speaker in 1897. E. E. Murrell was speaker when the lighting bill was pending. I was chairman of the Committee on Public Improvements. In October there was a meeting of some of the members to discuss the bill. There were present John K. Murrell, E. E. Murrell, George F. Robertson, John Helms, Otto Schumacher, myself, Julius Lehman, Harry Faulkner, Jerry Hannigan, John H. Schnettler, John A. Sheridan, Louis Decker, Emil Hartman, Adolph Madera, Charles J. Denny, Charles A. Gutke—there were eighteen present all told. John K. Murrell was selected to find out who was back of the bill and report back to the organization. A price was put on the bill and he was to see if he could get the price or not, \$75,000. Some of them wanted \$100,000. Mr. Bersch wanted \$100,000, some wanted less. Well, the majority of them voted for \$75,000 and they settled on that amount.

The next meeting of the combine was held after the bill was

killed, on November 28th. That meeting commenced early in the day, and it was a sort of continuous meeting all that day. It was in the committee room of the House of Delegates. Mr. Gutke came in; he had a bundle of money; he said there was \$20,000 there, that was money for passing the lighting bill he said. We turned down his proposition, and told him to return the money where he got it. We were in session on and off all that day until about five o'clock, then went to supper, scattered around at different places. We were discussing what we would do about the lighting bill. Some of them said, "The hurry-up wagon is coming;" "something doing tonight," and so on. There were various comments made on it. Along in the evening when the time came for the House to convene we went back to the chamber of the House of Delegates.

I found Col. Butler there lobbying for the bill on the floor of the House in the presence of the defendant; the members were arranging for the price for the passage of this bill, and they were going from one to another, there was a certain little circle that seemed to be managing this thing, and I was finally told to vote for the bill.

Mr. Gutke told me to vote for it, that it was all right. The House was called to order then and a motion was made to reconsider the bill and the motion carried and the bill was reconsidered and passed. The motion to reconsider, to the best of my recollection, was either by Mr. Robertson or Mr. Lehman, I am not positive. After that meeting went to Julius Lehman's

house. Ed Murrell, George Robertson and I think Louis Decker were there when I got there as near as I can remember. Myself and Julius Lehman, John H. Schnettler, Charles J. Denny, John K. Murrell, Robertson, Helms, Schumacher, Hartman, Madera, Schnettler, Denny, Decker. They were all there of the organization except Faulkner, Hannigan and Gutke. Kelly came in after I got there. Kelly went in the room back of the parlor where we were sitting; Sheridan was there with him and John Helms. A number went in and out. Each one went in that room and got his money, and it was checked off on a piece of paper they had there and counted out. I got mine, \$2,500. I saw them go in and come out. I could not positively say whether Lehman went in, but they all went in some time or another because they all got their money that were there. After I got my money I did not remain very long; went home with Ed. Murrell and John K. Murrell.

Have talked with the defendant concerning this case since. Was in jail with him. Couldn't tell what he said there, we talked on different subjects, about his travels while he was away, one thing and another. Don't recollect him saying anything while in jail about money; we talked about other matters.

To Mr. Krum. Was indicted on this charge. Have been told there was another information issued against me on the Suburban business. Live in Cleveland. Was subpoenaed to come here.

Do not know why the case against me based on the Subur-

ban bill was *nolle pros'd.* Suppose they can prosecute me any time. You do not apprehend any danger on that score? I don't stay awake over anything. I sleep sound. I don't allow it to distress me.

John Helms. Am a contractor; was a member of the House of Delegates at the time the lighting bill was pending before the Municipal Assembly. There was a meeting of the members of the House of Delegates in connection with that bill.

Mr. Folk. What was said and done at that meeting?

John Helms. The lighting bill coming up in the Council was discussed and talked about, and there was no definite action taken on that bill at that meeting. The meeting at which definite action was taken was around in October some time. Was held up in the House of Delegates. There were present the eighteen men that I have mentioned. A price was set on the bill by members saying how much they wanted for their votes. Mr. Kelly wanted \$100,000 for the passage of the bill; Mr. Lehman said he wanted \$75,000 for the bill; the majority voted for \$75,000; J. K. Murrell was selected, put on the bill to handle the bill, to try and find out who was back of the bill. The next meeting was about a week after, in the House of Delegates; defendant was present. J. K. Murrell reported he had been looking around, went to see Mr. Craney in reference to the bill, and Mr. Craney told him he knew nothing about the bill, didn't want to have anything to do about it, and Murrell was instructed to continue to try and find out who

was back of the bill. About two weeks after that he reported back that he was unable to find out who was back of the bill; then we decided to try a new scheme to find out who was back of the bill, and the members of that meeting voted to kill the bill to try and find out who was back of the bill. About a week after that the bill was voted on and was killed. The next meeting was called by Mr. Gutke. The 28th of November, about five o'clock in the evening we were told to be there, he had a proposition to make to the boys about the bill, so we all got together upstairs; Mr. Gutke came up and said he had received a proposition. Defendant was there. Gutke said he had received a proposition for \$47,500 for the passage of the bill; that was all the money that was in it. I asked him who was back of the bill, and he said he would not tell us, but he had \$20,000 of the money to show he was in good faith, and he would get the money; we would have that that afternoon, and get the balance that night when the bill was passed. He would not tell who was back of it. Mr. Robertson made a motion that we would not accept the money; for Mr. Gutke to take the \$20,000 back to the man that gave it to him and tell him we would not accept the proposition and we wanted \$75,000.

Mr. Gutke left ahead of me; when I got down the steps at the first floor and Mr. Gutke was near the entrance going out of the hall, Ed. Butler came up and stopped him. Couldn't hear what was said, but he reached down in his inside pocket and

handed Butler a package. Went back to the City Hall that day about a quarter to seven. J. K. Murrell called us together in the meeting of the House and said that Mr. Butler had been up to see him about the bill and asked him what we were going to do about it; he said he told Mr. Butler that the boys wanted \$75,000 for the passage of the bill; he said Mr. Butler told him he was not able to pay that much; he could only pay \$47,500 for the bill, and the boys had better take that money or they would not get nothing. He said he told Mr. Butler he had no authority to take the \$47,500, and he would report back to the boys before the House met, which he did, and we agreed there not to take the \$47,500, so he went out and told Mr. Butler; went outside and told Mr. Butler, and came on back and said that the only proposition he had to make to him was \$75,000. Butler came into the chamber and stood around talking to members, called me over and said, "John, you boys had better take the \$47,500; that is all the money I have got to pass the bill, \$2,500; you had better take it or you will get nothing." I said, "Mr. Butler, I have no authority to accept the proposition. I will go over and have Mr. Murrell come over and talk it over, if he will;" he said, "All right." He left me and was talking to other members of the combination; went over to the railing of the House to talk to Lehman, Kelly, Bersch, Gutke, Hartman, Madera, all the eighteen, with the exception of Faulkner, John K. Murrell and Hannigan. We were seated

there, Bersch and Kelly said they had talked to Mr. Butler and Mr. Butler said that was all the money he had, and we had better take \$47,500, which was \$2,500 a vote. Mr. Gutke also spoke up and said, "Boys, I have talked with Mr. Butler about this, and that is all the money there is in it, better take that or nothing." Mr. Lehman said, "I think we had better take \$2,500 a vote." I said, then, "I am satisfied to take \$2,500 a vote." Different members were asked and they agreed to take \$47,500 for the passage of the bill, to reconsider, and pass the bill that night. I think we put Mr. Bersch and Mr. Kelly to talk with Mr. Butler and close the deal. They went out to Mr. Butler in the hall and came back, and Mr. Bersch came back and reported everything was all right; they had got part of the money and would get the balance of the money after the bill was reconsidered and passed.

The House convened, and Mr. Lehman made a motion that the vote by which Council Bill 44 was killed be reconsidered, and the bill put on its passage, which was voted for by every one in the House that night. After the House adjourned I stopped and talked with Bersch, Lehman, Kelly and Sheridan. Kelly and Bersch were ahead of us, Mr. Butler was in the lead. We stopped on the corner, and Mr. Bersch and Mr. Kelly entered Butler's office on Tenth street, between Market and Walnut. We walked down to Pat Carmody's saloon; and some one called a hack there; we went to Julius Lehman's house.

Stopped at the gate a few

minutes, and while I was standing there saw a carriage come up; it pulled up in front of Mr. Lehman's house and Bersch, Sheridan and Kelly got out of the carriage; we walked into the reception hall and into the dining room.

Defendant was in the parlor. Sheridan walked into the parlor and left me and Kelly and Bersch there. He said Kelly had the money. Kelly took the money out of his pocket, placed it on the table and sat down and counted it \$2,500 at a time; Mr. Bersch would go to the door and call the member we had checked off to come in and get the money. Called Lehman's name off, Bersch got up and went to the door and called Lehman in and Kelly handed him the \$2,500.

To Mr. Krum. Am thirty-five; understand the obligation of an oath. When elected to the House of Delegates took the oath of office; swore that I would faithfully discharge the duties of my office. Understood what the oath meant; proceeded as early as I could to violate it.

Give us as near the connection as you can between the two instances of taking your oath and violating the oath, give us the connection as nearly as you can, when was it you first sold your vote? About eight or nine months after, I think; don't remember what bill it was. The next trade of that sort was made some time after that, I don't know exactly. From about nine months after I went into office down to the time when I quit I kept up a continuous course of trafficking and selling my vote. How many times I sold it altogether I don't know. The lowest

price I got for it was fifty odd dollars. Did not sell it once for a stove. The highest price I got was \$3,000. If a man came along and all I could get out of him was \$50 I took \$50, and if \$3,000 I took \$3,000, the price depended on the circumstances, what could be had; was indicted for my connection with the Suburban bill; also indicted for my connection with this lighting bill and both of those cases have been dismissed. They have a new information against me regarding the Suburban bill. I was also indicted for perjury about knowledge of the Suburban deal. That is pending yet. Went before the grand jury and was examined as to my connection with the Suburban bill and denied any such connection; was sworn before the grand jury and examined under oath, and under oath I stated I had no connection with that transaction at all; that led to my being indicted for perjury. Was examined before the grand jury as to my connection with the lighting bill for the purpose of learning whether there was a combination of members in the House of Delegates for the purpose of controlling legislation. I denied there was any such combination.

When did I come to make the change of front? After being in jail for six weeks I made up my mind if I got a chance to go before the grand jury I was going to tell the truth because I had three indictments against me, and that was enough; I was not going to have any more. I was getting \$45,000 bail and if I got any more I knew I would not get out on bail. Have no under-

standing with anybody representing the prosecution as to what is to happen to me. It was my practice in the House of Delegates when a bill came up to find out what there was in it. We all tried to find out what was in it. It did not make much difference whether the bill was an important one or not; we all wanted to find out what was in it, that is the members of the combination. They were all out for what was in it. That was kept up by me continuously from about eight months after I was sworn into office down to the expiration of my term. My business is that of builder and contractor. Builder of houses over the river at Granite City and Madison and repairing buildings. Served two terms in the House of Delegates. Went into the business of building and contracting about a year ago.

Mr. Krum. After you had exhausted your resources as vendor of your votes? Pretty near.

To Mr. Folk. The highest price I received was \$3,000 on the Central Traction; don't remember what the \$50 was on.

George F. Robertson, sub-contractor for the U. S. mail, and *Otto Schumacher*, commission merchant and brewery agent, members of the House of Delegates and of the combine, testified that there was a combine composed of eighteen members, all the defendants except Albright, and in addition to said defendants Robertson and the two Murrells. That some time before November 21st, 1899, they put J. K. Murrell on the bill as their agent. That on the 21st of November,

1899, he reported that he could not learn who was back of the bill, and that the said combine agreed to kill the bill. On the afternoon of the 28th of November, 1899, the combine had a meeting and Gutke said he had \$20,000 cash to pay combine, and \$27,500 would be paid when bill was passed. He was told to return the money to party he received it from and to state that the offer was declined. The House of Delegates, all the members being present, met at about 7:30 o'clock, November 28, 1899. The word was passed around to vote for the bill, and after the meeting to go to Lehman's house. Each of said witnesses said they received \$2,500 from Kelly at Lehman's house.

George F. Robertson cross-examined by *Mr. Rows*. How often did you violate the first oath that you subscribed as member of the House of Delegates? Well, I really could not tell you; I don't know how often I did. Of course, then, you cannot tell how often you violated the second oath that you took in 1899 as member of the House of Delegates? No, I cannot. You can tell, though, that in January, 1902, last year, you were guilty of perjury when you testified before the grand jury, can't you? Yes, sir.

Do you know how often during the year 1902 you have been guilty of perjury? On three occasions.

Are you certain of that? Yes, sir.

You have already sworn on three different occasions that there was no combination of the members of the House of Delegates for mercenary or improper

IX. AMERICAN STATE TRIALS.

er purposes, so far as you know?
Yes, sir.

You have also on at least two different occasions sworn and testified under oath when solemnly sworn that there was no corruption of any kind during the time you were a member of the House of Delegates, so far as you knew? Yes, sir.

Are you in business now? I have been sub-contractor for the United States mail for two years. What other business had you besides Member of the House of Delegates from 1897 to 1901? Contracting business of plastering.

You had two trades then, plasterer and member of the House of Delegates? Yes, sir, I was a contractor.

Edward E. Murrell. Am a livery stable keeper, was a member of the House of Delegates for six years; was a member in 1899, was speaker when the lighting bill was passed. (The witness gave similar evidence to that of the former ones as to the combine and its members and the meetings.) Got down to the House on the evening of November 28th a little late. As I came into the House I met my brother there and he was seated kind of one side, and I said, "What is the trouble;" he said, "I have seen Butler and he will not give \$75,000, won't give over \$47,500 and I won't have any more to do with it." Then I was called into the clerk's office. When I came out was told it was all right. I called the House to order, Mr. Lehman got up and made a motion to reconsider the bill which failed to pass at the previous meeting, and it was reconsidered. All the members of the combine

voted for it. Was in the chair at the time.

Went after that to Lehman's house. (The witness corroborated the former witnesses as to what occurred there.)

Mr. Rows. When you were elected in 1897 you subscribed the oath. You solemnly swore then that you would truthfully, honestly and faithfully, or words to that effect, discharge your duties as member of the House of Delegates? Yes, sir. In 1899 and 1901 you subscribed to the same oath again? Yes, sir. From 1897 to 1899 can you tell how often you violated that oath? Could not state the exact number of times.

Just approximate it, come within a hundred or fifty times? I guess two or three times. Well, from 1899 up to 1901 how often did you violate it? I could not say. Well, approximate it, come within twenty-five, thirty, forty or fifty times? No more than three or four times. And from 1901 up to 1903? None as I know of. Have you any lurking suspicion that there has been any occasion that you do not know of on which you violated that oath? No, sir.

In January, 1902, do you know about how many times you were guilty of perjury? I think it was twice, I am not positive. You are certain it was once? Yes, sir. And your best impression now is it was twice? Yes, sir. There is no question about your being satisfied you were guilty of perjury at least once in 1902? Yes, sir. And the probabilities are that it was twice? Yes, sir.

Otto Schumacher cross-examined by *Mr. Rows.* Do you recollect that in April, 1895, you sol-

emply swore as follows: "I, Otto Schumacher, having been elected by the qualified voters of the Sixth Ward of the City of St. Louis to be a member of the House of Delegates of the City of St. Louis, do solemnly swear that I will support the Constitution of the United States, the Constitution of the State of Missouri and the Charter and Ordinances of the city of St. Louis, and faithfully discharge the duties of my office; that I possess all the qualifications prescribed by Article 3 of the City Charter, and that I am not subject to any of the disqualifications therein named." Yes, sir.

Can you brush up your memory and tell us how often you violated that oath? I can't; as often as Mr. Lehman did. What is the reason of your inability to tell; are the times too numerous to mention? Yes, sir.

You recollect also of having subscribed an oath on the 10th of April, 1897? Yes, sir.

Do you know how often you violated your oath? No, sir. Do you remember testifying before the grand jury that you knew of no corruption in the House of Delegates? Yes, sir. You expect no reward for the evidence you are giving? No, sir. It is purely free and voluntary is it? Yes, sir, after being in jail.

Mr. Folk. You were with the prisoner in jail? Yes, 41 days. Did you talk to him? Yes, a great deal. He said once that he was going to write a book about sixteen years boodling in the House of Delegates. What did he say the title was to be, or the name? The name was to be "Aint It a Shame to Take the Money When You Know the Reason Why."

Mr. Folk introduced in evidence Council Bill No. 44, the Journal of the Council for 1899, 1900 and the Journal of the House of Delegates for the same years.

THE INSTRUCTIONS TO THE JURY.

JUDGE RYAN. Gentlemen of the Jury:

By the indictment filed in this case on the fourth of October, 1902, Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Julius Lehman, Charles A. Gutke, Louis Decker, T. Ed. Albright, John Helms, Emil Hartman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner, are jointly charged with the offense of bribery. The defendant Julius Lehman is now alone on trial and pleads not guilty.

It is the duty of the Court to instruct you on the questions of law arising in this case, and it is your duty to receive such instructions as the law of the case and to find the defendant either guilty or not guilty according to the law as declared in these instructions, and the evidence as you have received it under the direction of the Court.

First. You are instructed that under the laws of the State of Missouri, the city of St. Louis is a municipal corporation, and was such at the dates mentioned in the indictment, November 28th,

1899, and at the dates mentioned in the evidence; that the legislative power of the city of St. Louis is and was at the times aforesaid vested in a Council and a House of Delegates, together styled the Municipal Assembly of St. Louis; the members whereof are and were elected by the citizens of said city, and, upon election and qualification, are public officers of said city; and that before any measure or proposition can or could at the times aforesaid become a law and ordinance of said city, it is and was necessary and requisite that the same should be duly passed and enacted by a majority vote of the members of said Council and House of Delegates respectively, and approved by the mayor of said city; that in the event a measure or proposed ordinance should be introduced in that branch of the Municipal Assembly known as the Council, and by that branch passed and enacted, the same would be certified to and delivered to the House of Delegates for the consideration and vote of the said House of Delegates; that the right of the said city of St. Louis to authorize and direct the said Board of Public Improvements of said city of St. Louis to light certain designated streets, avenues, sidewalks, alleys, wharves, public grounds and squares of the city of St. Louis after the first day of January, 1900, and designate the fund out of which the cost thereof should be paid, could be exercised only by ordinance passed and signed or approved as above stated.

Second. If upon consideration of all the evidence, you believe and find beyond a reasonable doubt from the evidence in the case that on or about the 28th day of November, 1899, the defendant Julius Lehman and the said Edmund Bersch, Otto Schumacher, John A. Sheridan, Charles J. Denny, Adolph Madera, John H. Schnettler, Charles A. Gutke, Louis Decker, T. Ed Albright, John Helms, Emil Hartman, Charles F. Kelly, Jerry J. Hannigan, William M. Tamblyn and Henry A. Faulkner were members of said House of Delegates; that there was then and there pending and undetermined before said Municipal Assembly and brought before said Municipal Assembly for the consideration, opinion, judgment and votes of the members thereof, a certain ordinance known and styled as Council Bill 44, wherein and whereby it was proposed that said city of St. Louis (by said ordinance duly passed and enacted by the said Municipal Assembly and approved by the Mayor of said city), should authorize and direct the Board of Public Improvements of said city of St. Louis to light certain designated streets, avenues, sidewalks, alleys, wharves, public grounds and squares of said city of St. Louis after the first day of January, 1900, and should designate the fund out of which the cost thereof should be paid; that the defendant Julius Lehman and said other persons hereinbefore named as defendants in the indictment, knowing of the pendency of said Council Bill No. 44, did at the city of St. Louis, on or about the 28th day of November, 1899, unlawfully, corruptly and feloniously, directly or indirectly, solicit, propose, procure, accept and receive a certain promise and undertaking to make a certain gift, consideration, gratuity and reward to them,

the said defendant Julius Lehman and other defendants in this indictment hereinbefore named, under an agreement that their votes, opinions, judgments and decisions as public officers as aforesaid, and as members of said House of Delegates and said Municipal Assembly, should be given for and in favor of the passage and enactment of the measure then known as Council Bill No. 44 aforesaid, then pending before said House of Delegates and before said defendants in their said official capacities and character as members of the said House of Delegates and of the Municipal Assembly (if you find from the evidence that said Council Bill was so pending in said House of Delegates at said time); and under an agreement that they, said defendant Julius Lehman and other defendants in said indictment and hereinbefore named, would and should perform their said public and official duties in the premises with partiality and favor and otherwise than according to law, and that they, said defendant Julius Lehman and other defendants in said indictment and hereinbefore named, did then and there unlawfully, corruptly and feloniously solicit, propose, procure, and make and enter into a certain corrupt bargain, agreement and covenant with one Edward Butler by and under which said corrupt bargain, agreement and covenant made by this defendant, Julius Lehman, and said other defendants in said indictment and hereinbefore named, and said Edward Butler as aforesaid (if you believe and find from the evidence that said corrupt bargain, agreement and covenant was made), a large sum of money, to-wit, the sum of \$47,500 lawful money of the United States, was by said Edward Butler placed in the hands of Charles F. Kelly, one of the defendants in said indictment and hereinbefore named, who was then and there a member of said House of Delegates and said Municipal Assembly; and that you find the said Charles F. Kelly had been theretofore selected, designated and appointed by said defendant Julius Lehman and the said other defendants in said indictment and hereinbefore named, as their agent and representative to confer with, arrange with and receive from the said Edward Butler the said sum of \$47,500 upon the express promise, undertaking, agreement and understanding by and between said Edward Butler and said defendant Julius Lehman and the other defendants in said indictment and hereinbefore named, in pursuance of the corrupt bargain, agreement and covenant aforesaid, that said money was a bribe to said defendant Julius Lehman and the other defendants in said indictment and hereinbefore named as public officers, as aforesaid, and in their official capacity and character as aforesaid, that they, the said defendant, Julius Lehman and the other defendants in said indictment and hereinbefore named, as members of the House of Delegates, and in their said official capacity and character should and would give their votes, opinions, judgments and decisions for and in favor of said Council Bill 44, and for and in favor of the passage of and enactment of said Council Bill 44, when the same might and should be brought before said House of Delegates and before them, the said defendant Julius Lehman and the other defendants in said indictment and hereinbefore

named, in their official capacity and character as aforesaid; and upon the express promise, undertaking, agreement and understanding that in the event said defendant Lehman and the other defendants in said indictment and hereinbefore named, should vote for the passage by said House of Delegates of said Council Bill 44, said sum of \$47,500 should be wholly paid and delivered over to them, said defendant Julius Lehman and the other defendants in said indictment and hereinbefore named, as a gratuity, reward and bribe to them for their votes as members of said House of Delegates for and in favor of the passage and enactment of said proposed ordinance by said House of Delegates, then you will find this defendant Julius Lehman, guilty of the offense of bribery as charged in the indictment and assess his punishment at imprisonment in the penitentiary for a term of not less than two nor more than seven years; and unless you so find the facts to be you will acquit the defendant Lehman.

Third. If you find and believe from the evidence that any witnesses who have testified on the part of the State in this case were concerned in and participated in the commission of the same offense (if you believe and find from the evidence the offense was committed) which, by the indictment is charged against this defendant Julius Lehman, and the other defendants named in said indictment and hereinbefore named in these instructions, then such witnesses are to be considered as accomplices.

The Court instructs you that you are at liberty to convict the defendant on the uncorroborated testimony of an accomplice alone, if you believe the statements given by said accomplice in his testimony are true in fact and sufficient in proof to establish the guilt of the defendant; but you are instructed that the testimony of an accomplice in crime when not corroborated by some person or persons not implicated in the crime as to material matters to the issue, that is, matters connecting the defendant with the commission of the crime charged against him and identifying this as the perpetrator thereof, ought to be received by you with great caution, and you ought to be fully satisfied of its truth before you should convict the defendant on such testimony.

Fourth. Feloniously as used in this indictment and these instructions means wickedly and against the admonition of the law.

Corruptly, as used in the indictment and these instructions means wrongfully, that is, it means the doing of an act with the intent to obtain an improper advantage inconsistent with official duty and the rights of others.

Fifth. The second count in the indictment is withdrawn from your consideration and you will only consider the first count.

Sixth. You are further instructed that the indictment contains the formal statement of the charge, but it is not to be taken as any evidence of defendant's guilt.

The law presumes the defendant to be innocent, and this presumption continues until it has been overcome by evidence which

establishes his guilt to your satisfaction and beyond a reasonable doubt; and the burden of proving his guilt rests with the State.

If, however, this presumption has been overcome by the evidence and the guilt of the defendant established to a moral certainty and beyond a reasonable doubt, your duty is to convict.

If, upon consideration of all the evidence, you have a reasonable doubt of the defendant's guilt, you should acquit; but a doubt to authorize an acquittal on that ground, ought to be a substantial doubt touching the defendant's guilt, and not a mere possibility of his innocence.

You are further instructed that you are the sole judges of the credibility of the witnesses and of the weight to be given to their testimony. In determining such credibility and weight you will take into consideration the character of the witness, his manner on the stand, his interest, if any, in the result of the trial, his or her relation to or feelings towards the defendant or any of the State's witnesses, the probability or improbability of his statements, as well as all the facts and circumstances given in evidence. In this connection you are further instructed that if you believe that any witness has knowingly sworn falsely to any material fact, you are at liberty to reject all or any portion of such witness' testimony.

The *Prisoner's Counsel* declined addressing the jury.

Mr. Folk reviewed the evidence to the jury and concluded: You have heard how the nineteen members of the combine met and agreed upon a price for the passage of the lighting bill. The money was not to go to the city, but into their own pockets. The testimony is not given by men of highest honor, because men of high honor would not be in such deals. We must prove what the combine did by members of the combine, and not by ministers of the Gospel. Honest men do not witness such transactions. It is to the credit of these witnesses, however, that they have come into court and told the truth. If such evidence is not accepted by juries it would be impossible to ever prove bribery, for men who are engaged in such matters do not proclaim it from the house tops. The boodler is a traitor to government and law, and the part of the patriot is to stamp out corruption.

Integrity is the basis of the nation itself. All government rests upon law and the law rests upon its officers. They must be punished who sell that which does not belong to them, but to the people, for whom they hold it in trust. Men like that are not the kind who make nations great or ad-

vance us in the line of material progress. Bribery is the most dangerous of crimes. Other offenses violate one law, while bribery strikes at the foundation of all law. No government can exist where it is tolerated. When the passage of laws become a mere matter of bargain and sale, then there will not be a government of and for the people, but a government for the few and by the few, with wealth enough to purchase official power. I hope to see the day when one will no more jest with an official as to his honesty than one would make light of a woman's virtue. Official honesty is the basis of civilization, for civilization rests upon law, and law upon the official. We need more of the patriotism of peace. We need men whom the spoils of office do not kill. We need men great of heart, of mind and of purpose, but we also need men whom the lust of gold does not control. We need men who have honor, men who will not lie, men who have principles and the courage to sustain them. It is time now to announce and enforce the decree that in Missouri public office must be held for the public good and not for private gain.

THE VERDICT.

The Jury, after an absence of a few minutes, returned a verdict in the following words: We, the Jury, find the defendant guilty of bribery as charged in the indictment and assess the punishment at imprisonment in the penitentiary for seven years. George M. Griffen, foreman.

The verdict and sentence were subsequently (June 14, 1904) affirmed by the Supreme Court. *State v. Lehman*, 182 Mo. 424.

THE TRIAL OF MEMBERS OF THE KU KLUX ORGANIZATION FOR CONSPIRACY, COLUMBIA, SOUTH CAROLINA, 1871.

THE NARRATIVE.

The Ku Klux Klan was the outgrowth of peculiar conditions, social, civil, and political, which prevailed at the South from 1865 to 1869. Its birthplace was Pulaski, in middle Tennessee, a town of 3,000 inhabitants. There began a movement which in a short time spread as far north as Virginia and as far south as Texas, and which for a period convulsed the country. It finally spread to practically all of the late Confederate States. A convention of delegates was held at Nashville in the spring of 1867. At this convention the territory covered by the Klan was designated as "The Invisible Empire." This was subdivided into "realms," coterminous with the boundaries of States. The "realms" were divided into "dominions," corresponding to the congressional districts; the "dominions" into "provinces," coterminous with counties; and the "provinces" into "dens." A noted ex-Confederate military leader, General Nathan B. Forrest, was elected its head or Grand Wizard as he was called.

The names given to the national and local officers were fantastic and calculated to excite fear among the peasant negro population. They were: The Grand Wizard of the Invisible Empire and his ten Genii. The Grand Dragon of the Realm and his eight Hydras. The Grand Titan of the Dominion and his six Furies. The Grand Giant of the Province and his four Goblins. The Grand Cyclops of the Den and his two Night Hawks. A Grand Monk. A Grand Scribe. A Grand Exchequer. A Grand Turk. A Grand Sentinel. And there was adopted a costume composed of a

white mask, a tall fantastic cardboard hat, a robe to cover the whole person and a secret ritual.

The Nashville convention made a positive and emphatic statement of the principles of the order. It was in the following terms:

"We recognize our relation to the United States Government; the supremacy of the Constitution; the constitutional laws thereof; and the union of states thereunder.

The peculiar objects of the order are: (1) To protect the weak, the innocent, and the defenseless from the indignities, wrongs and outrages of the lawless, the violent, and the brutal; to relieve the injured and the oppressed; to succor the suffering, and especially the widows and orphans of the Confederate soldiers. (2) To protect and defend the Constitution of the United States, and all laws passed in conformity thereto, and to protect the States and people thereof from all invasion from any source whatever. (3) To aid and assist in the execution of all constitutional laws, and to protect the people from unlawful seizure, and from trial except by their peers in conformity to the laws of the land."

It was the reconstruction policy of the Republican party which caused the Ku Klux Klan to spread over the whole South. The southern whites saw their country in the hands of ignorant blacks and irresponsible carpet baggers; filling the public offices and seizing their lands under the guise of brutal tax laws executed by black legislators. They saw their late slaves protected by Federal bayonets becoming insolent and revengeful, and they feared for the safety of their families and property. To keep the negro from the polls and to regain the government of their States was one of their objects; to protect in the meantime their lives and those of their wives and children was another. They knew the superstition of the negro and they played on it with success. A Ku Klux den would parade at night in their masks and gowns and with horns on their heads. The negroes would gather on the wayside and gaze with open mouth at the cavalcade.

A tall horseman in hideous garb would turn aside from the line, dismount, and stretch out his bridle-rein toward the negro, as if he desired him to hold his horse. The frightened African would extend his hand to grasp thereon. As he did so, the Ku Klux took

his own head from his shoulders and offered to place that also in the outstretched hand. The negro stood not upon the order of his going, but departed with a yell of terror. To this day he will tell you: "He done it, suah, boss. I seed him do it." The gown was fastened by a drawstring over the top of the wearer's head. Over this was worn an artificial skull made of a large gourd or of paste-board. This, with the hat, could be readily removed, and the man would then appear to be headless. Such tricks gave rise to the belief—still prevalent among the negroes—that the Ku Klux could take themselves all to pieces whenever they wanted to. Some of the Ku Klux carried skeleton hands. These were made of bone or wood, with a wrist or handle long enough to be held in the hand, which was concealed by the sleeve of the gown. The possessor of one of these was invariably of a friendly turn, and offered to shake hands with all he met, with what effect may be readily imagined. A trick of frequent perpetration in the country was for a horseman, spectral and ghostly-looking, to stop before the cabin of some negro needing a wholesome impression and call for a bucket of water. If a dipper or gourd was brought it was declined, and the bucketful of water demanded. As if consumed in raging thirst, the horseman grasped it and pressed it to his lips. He held it there till every drop of the water was poured into a gum or oiled sack concealed beneath the Ku Klux robe. Then the empty bucket was returned to the amazed negro with the remark: "That's good. It is the first drink of water I have had since I was killed at Shiloh." Then a few words of counsel as to future behavior made an impression not easily forgotten or likely to be disregarded.¹

The Ku Klux Klan lasted for three years; it disbanded as quietly and as quickly as it formed. When the white people had obtained their right to govern again and its work was done, Forrest sent out this order, through word of mouth, from den to den, throughout the Empire:

"The Invisible Empire has accomplished the purposes for which it was organized. Civil law now affords ample protection to life, liberty and property; robbery and lawlessness are no longer unrebuked; the better elements of society are no longer in dread for the safety of their property, their persons, and their families. The Grand Wizard, being invested with power to determine questions of paramount importance, in the exercise of the power so conferred, now declares the Invisible Empire and all the subdivisions thereof dissolved and disbanded for ever."

And the Klan rode no more.

During its life proclamations were fulminated against the

¹ D. L. Wilson, *The Ku Klux Klan*, *post*, p. 602.

Klan by the President of the United States and by the Governors of States; and hostile statutes were enacted both by State and National legislatures, for there had become associated with the name of Ku Klux Klan gross mistakes and lawless deeds of violence.

The transformation of the Ku Klux Klan from a band of regulators, honestly trying to preserve peace and order, into the body of desperate men who convulsed the country by deeds of violence is part of the history of the United States. A southern writer has in a northern magazine set out the causes of this:

There was causes adequate to the results produced, causes from which these results followed naturally and almost necessarily, and which have never been fully and fairly followed out. They may be classed under three heads: (1) unjust charges; (2) misapprehension of the nature and objects of the order by those not members of it; (3) unwise and over-severe legislation. As has already been pointed out, the order contained within itself, by reason of its purpose and methods, sources of weakness. The devices by which the Klan deceived outsiders enabled all who were so disposed, even its own members, to practice deception upon the Klan itself. It placed in the hands of its members facilities for doing deeds of violence for the gratification of innate deviltry or personal enmity, and for having them credited to the Klan. To evilly disposed men membership in the Klan was an inducement to wrong-doing; in fact, it presented to all men a dangerous temptation. In certain contingencies, at any time likely to arise, it required a considerable amount of moral robustness to withstand this temptation. Many did not withstand it, and deeds of violence were done by men who were Ku Klux, but who at the time were acting under cover of their connection with the Klan, but not under its orders; and, because these men were Ku Klux, the Klan had to bear the odium of their misdeeds. In addition to this, the very class which the Klan proposed to hold in check and awe into good behavior after a while became wholly unmanageable. Those who had formerly committed depredations to be laid to the charge of the poor negroes now assumed the guise of Ku Klux, and returned to their old ways with renewed ardor. In some cases even the negroes played Ku Klux. Outrages were committed by masked men in regions far remote from any Ku Klux organization. The fact that these persons took pains to declare that they were Ku Klux was evidence that they were not. In this way it came about that all the disorder prevailing in the country was charged upon the Ku Klux. The Klan had no way in which to refute or disprove the charge. They felt that it was hard to be charged with violence of which they were innocent. At the same time they felt that it was natural

and not wholly unjust that this should be the case. They had assumed the office of regulators. It was therefore due society, due the government, which so far had not molested them, that they should at least not afford the lawless class facilities for the commission of excesses greater than any they had hitherto indulged in; and, above all, that they should restrain their own members from lawlessness. The Klan felt all this; and in its efforts to relieve itself of the stigma thus incurred, it acted in some cases against the offending parties with a severity well merited no doubt, but unjustifiable. As is frequently the case, they went beyond the limits of prudence and right by a hot zeal for self-vindication against unjust aspersions. They thought the charge of wrong was unfairly brought against them. They did worse wrong than that charged to clear themselves of the charges.

The Klan, from the first, shrouded itself in deepest mystery, and out of this grew trouble not at first apprehended. They wished people not to understand; they tried to keep them profoundly ignorant. The result was that the Klan and its objects were wholly misunderstood and misinterpreted. Many who joined the Klan, and many who did not, were certain that it contemplated some mission far more important than its overt acts gave evidence of. Some were sure it meant treason and revolution. The negroes, and the whites whose consciences made them the subjects of guilty fears, were sure it boded no good to them. When the first impressions of awe and terror to some extent wore off, a feeling of intense hostility toward the Ku Klux followed. This feeling was all the more bitter because founded not on overt acts which the Ku Klux had done, but on vague fears and surmises as to what they intended to do. Those who entertained such fears were in some cases impelled by them to become the aggressors. They attacked the Ku Klux before receiving from them any provocation. The negroes formed organizations of a military character, and drilled by night. These organizations had for their avowed purpose "to make war upon and exterminate the Ku Klux." On several occasions the Klan was fired into. The effect of such attacks was to provoke counter hostility from the Klan; and so there was irritation and counter-irritation, till the state of things became little short of open warfare. In some respects it was worse; the parties wholly misunderstood each other. Each party felt that its cause was the just one; each justified the deed by the provocation.

The Ku Klux, intending wrong, as they believed, to no one, were aggrieved that acts which they had not done should be charged to them; and they felt outraged that they should be molested and assaulted. The other party, satisfied that they were acting in self-defense, felt fully justified in assaulting them. And so each party goaded the other from one degree of lawlessness to another."²

² The Ku Klux Klan, Its Origin, Growth and Disbandment. D. L. Wilson. The Century, 28-398.

IX. AMERICAN STATE TRIALS.

THE TRIALS.

On November 27, 1875, the United States Circuit Court convened at Columbia, S. C., to investigate and prosecute the Ku Klux organization for its breaches of the law in the State of South Carolina. The Hon. HUGH L. BOND, of Maryland, Circuit Judge, presided, and the Hon. GEORGE S. BRYAN, of Charleston, District Judge, sat with him upon the Bench.

On the opening the court the United States District Attorney for South Carolina, D. T. Corbin, presented a commission from the Department of Justice, at Washington, associating with him, in the prosecution Daniel H. Chamberlain, then Attorney General and afterward Governor of the State of South Carolina, and Hon. Henry Stanbery, ex-Attorney General of the United States, appeared in court with Reverdy Johnson, in the defense of the persons charged as Ku Klux conspirators. These four gentlemen, Messrs. Corbin and Chamberlain on one side, and Messrs. Johnson and Stanbery on the other, from then until the court adjourned, were the prominent actors in the proceedings which are chronicled in the following pages.

B. F. Jackson was appointed foreman of the grand jury, which, besides the foreman, was composed of the following individuals: Richard Blackney, William Wingate, Dug Harris, R. A. DesVerney, James B. Williams, F. M. Johnstone, Thomas J. Thackham, Adam Branch, W. B. Mitchell, Henry Jones, Sandy Tucker, James C. Bonsall, James W. Heyward, James G. Graham, C. Barnum, Le Grand Singleton, Lewis Prior, Jacob Thompson, H. Chambion and Frank J. Lawrence.

Judge Bond in charging the grand jury told them that the act of Congress under which they were called upon to indict the prisoners declared that every juror should before entering upon any investigation, hearing or trial under the act, take and subscribe an oath, in open court, that he had never, directly, or indirectly, counseled, advised or voluntarily aided any such combination or conspiracy; and every

person who should take this oath, and swear falsely, should be guilty of perjury.*

The conspiracy to which that section refers the Judge told them was contained in the 2d section of the Act (Act Congress, April 20, 1871), which reads:

2. That if two or more persons within any State or Territory of the United States shall conspire together to overthrow, or to put down, or to destroy, by force, the Government of the United States, or to levy war against the United States, or to oppose by force the authority of the Government of the United States, or by force, intimidation, or threat to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take or possess any property of the United States contrary to the authority thereof, or by force, intimidation, or threat to prevent any person from accepting or holding office or trust or place of confidence under the United States, or from discharging the duties thereof, or by force, intimidation, or threat to induce any officer of the United States to leave any State, District, or place where his duties as such officer might lawfully be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or to injure his person while engaged in the lawful discharge of the duties of his office or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duty, or by force, intimidation, or threat to deter any party or witness in any Court of the United States from attending such Court, or from testifying in any matter pending in such Court, fully, freely, and truthfully, or to injure any such party or witness in his person or property on account of his having so attended or testified, or by force, intimidation, or threat to influence the verdict, presentment or indictment of any juror or grand juror in any Court of the United States, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or on account of his being or having been such juror or shall conspire together, or go in disguise upon the public highway, or upon the premises of another for the purpose, either directly or indirectly, of depriving any person or class of persons of the equal protection of the laws, or of equal privileges or immunities under the laws, or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State the equal protection of the laws, or shall conspire together for the purpose of in any manner impeding, hindering, obstructing, or defeating the due course of justice in any State or Territory, with intent to deny to any citizen of the United States the due and equal protection of the laws, or to injure any person in his person or his property for lawfully enforcing the right of any person or class of persons to the equal protection of the laws, or by force, intimidation, or threat to

* Act of Congress of April 20, 1871, Sec. 5.

prevent any citizen of the United States lawfully entitled to vote from giving his support or advocacy in a lawful manner towards or in favor of the election of any lawfully qualified person as an elector of President or Vice-President of the United States, or as a member of the Congress of the United States, or to injure any such citizen in his person or property on account of such support or advocacy, each and every person so offending shall be deemed guilty of a high crime, and, upon conviction thereof in any District or Circuit Court of the United States, or District or Supreme Court of any Territory of the United States having jurisdiction of similar offenses, shall be punished by a fine not less than five hundred nor more than five thousand dollars, or by imprisonment, with or without hard labor, as the Court may determine, for a period of not less than six months nor more than six years or both."

After being duly sworn, the grand jury was charged by Judge Bond, as follows:

Your duty has been sufficiently intimated to you by the words of the oath you have just taken. The Court will say to you, that in the investigation of the cases that will be brought before you, it is necessary you should exercise great patience. Many of the witnesses are laboring under a great deal of unusual excitement; many of them are ignorant people, not accustomed to appearing in Courts, and it is absolutely necessary that you should bear with them patiently.

You, yourselves, are not to admit the excitement outside to have any entrance into the grand jury room. You are to find your presentments upon the testimony of the witnesses that comes before you, and not upon outside statements. You will exercise your own best judgment, and assume the great responsibility the law casts upon you, and do your duty with impartiality and fairness, but with firmness.

You may now retire into your room and examine such witnesses as the United States may send before you.

**THE TRIAL OF SHEROD CHILDERS, EVANS
MURPHY, WILLIAM MONTGOMERY, AND
HEZEKIAH PORTER, FOR CONSPIRACY,
COLUMBIA, SOUTH CAROLINA, 1871.**

THE NARRATIVE.

The first of the Ku Klux against whom indictments were found by the Federal Jury at Columbia, S. C., were ignorant countrymen. But they had distinguished counsel, Reverdy Johnson, a United States Senator, and Henry Stanbery, a former Attorney General of the United States, who interposed various legal objections and made learned legal arguments against the prosecution. But when these were overruled, the prisoners pleaded guilty and threw themselves on the mercy of the Court. They were questioned by the Presiding Judge and when it was shown that they were very humble followers and in no sense leaders of the Klan, and that they had taken a very slight part in only one raid, they were each given a small fine and a short term of imprisonment.

THE TRIAL.¹

*In the United States Circuit Court, Columbia, South Carolina,
December, 1871.*

HON. HUGH L. BOND,²
HON. GEORGE S. BRYAN,³ } Judges.

December 4.

The grand jury had previously brought into court an indictment against Allen Crosby, Sherod Childers, *alias* Bunk

¹ *Bibliography.* “*Proceedings in the Ku Klux Trials, at Columbia, S. C., in the United States Circuit Court, November Term, 1871. Printed from government copy. Columbia, S. C.: Republican Printing Company, State Printers. 1872.

“*Argument of Hon. D. T. Corbin on the trial of the Ku Klux before the United States Circuit Court, November term, 1871; held at

Childers, Banks Kell, Evans Murphy, Hezekiah Porter, Sylvanus Hemphill and William Montgomery.

There were ten counts. The *first* count charged that the prisoners did conspire to violate the first section of an act of Congress entitled, "An Act to enforce the rights of citizens of the United States to vote in the several States of this Union, and for other purposes" (May 31st, 1870) by unlawfully hindering, preventing, and restraining divers male citizens of the United States, of African descent, qualified to vote, from exercising the right and privilege of voting, and by other unlawful means, not allowing them to vote at an election.

The *second* count charged them with conspiring to prevent one Amzi Rainey from voting—a right granted to him by the United States Constitution. The *third* count was a repetition of the second with a clause setting out a charge of burglary; the *fourth* count that they "did attempt to control Amzi Rainey in exercising the right of suffrage, to whom the right of suffrage is guaranteed by the fifteenth amendment to the Constitution of the United States." The *fifth* count repeated the fourth with a clause charging burglary. The *sixth* count charged a conspiracy to oppress Rainey for having prior to February, 1871, exercised the right of suffrage. The *seventh* count was a repetition of the sixth with the charge of burglary added. The *eighth* count charged that they "did conspire together, with intent to injure, oppress, threaten and intimidate Amzi Rainey, a citizen of the United States, with intent to prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution of the United States, to-wit: The right to be secure in his person, houses, papers and effects against unreasonable searches and seizures." The *ninth* count was for "unlawfully conspiring to deprive Amzi Rainey of the equal protection of the

Columbia, S. C. Washington, D. C. Chronicle Publishing Co., 511 Ninth St. 1872.

"When the Ku Klux Rode. By Eyre Damer, New York. The Neale Publishing Co. 1912.

"The Ku Klux Klan. By Anna Cooper Burton, President Wade Hampton Chapter, No. 763, Daughters of the Confederacy, Los Angeles, Cal. Warren T. Potter, Publisher and Bookseller, Los Angeles, Cal.

"The Ku Klux Klan. Its Origin, Growth and Disbandment, D. L. Wilson. *The Century*, 28-398."

² BOND, HUGH LENNOX. (1828-1893.) Born and died Baltimore, Md. Graduated University City of New York 1848; admitted to Maryland Bar, 1851; Judge Baltimore Criminal Court 1860-1868; United States Circuit Judge 1870-1893.

³ BRYAN, GEORGE S. (1809-1895.) Born Charleston, S. C. Lieutenant Florida War 1836. United States District Judge South Carolina 1866-1886. Died Flat Rock, S. C.

law." The *tenth* count, was for unlawful conspiracy to deprive him of "equal privileges and immunities" under the law. The *eleventh* count charged that they "unlawfully did conspire together to injure Amzi Rainey, a citizen of the United States, lawfully entitled to vote, in his person, on account of giving his support, in a lawful manner, in favor of the election of A. S. Wallace, a lawfully qualified person, as a member of the Congress of the United States."

D. T. Corbin,⁴ United States District Attorney, and *D. H. Chamberlain*,⁵ for the Government.

*Henry Stanbery*⁶ and *Reverdy Johnson*,⁷ for the Prisoners.

Mr. *Stanbery* moved to quash the indictment and arguments were made by himself and Messrs. *Corbin*, *Chamberlain* and *Johnson*.

December 7.

JUDGE BOND. After the prolonged and very able arguments of counsel upon this motion to quash, we feel embarrassed, gentlemen, that upon so little deliberation, we are to pass judgment upon the grave

⁴ CORBIN, DAVID TIMOTHY. (1833-1905.) Born Brasher, N. Y. Graduated Dartmouth 1853. In Civil War, Capt. 3rd Vermont Volunteers, Capt. 13th Veteran Reserve Corps; Brevet Major Volunteers. Official of the Freedman's Bureau, on duty near Charleston at the close of war. U. S. District Attorney South Carolina, 1867-77. President of the South Carolina Senate for several years. Claimed election by Legislature of South Carolina to U. S. Senate. Published statement of claim, Washington, D. C., 1877. Returned north 1878. Removed to Chicago 1885. Lecturer and Professor of Constitutional law Kent (Chicago) College of Law; Illinois State College of Law; Professor of International law Lake Forest University. Died at Maywood, Ill. See Dartmouth College, General Catalogue, Alumni (1769-1910). Allen's "Governor Chamberlain's Administration (1888)." Reynold's "Reconstruction in South Carolina (1863-1877)." 1905." Chicago *Record-Herald* and Chicago Daily *Tribune*, December 9, 1905.

⁵ CHAMBERLAIN, DANIEL HENRY. Born West Brookfield, Mass., 1835. Graduated Yale 1862; Harvard Law School 1863. Served in the Civil War in the Massachusetts Colored Cavalry and in 1866 located in Charleston. Attorney General, South Carolina, 1868. Governor, 1874. Was not re-elected and removed to New York City, where he practiced law.

⁶ STANBERY, HENRY. (1803-1881.) Born and died New York City. Attorney-General Ohio 1846. Attorney-General United States 1866-1868. One of the counsel of President Johnson in the Impeachment Trial.

⁷ See 8 Am. St. Tr. 41.

question raised here. But the fact that so many persons are now in confinement upon these charges, and that so many witnesses are in attendance upon the court, at great personal expense, makes it necessary that we should not delay longer. And the first objection to the first count in the indictment is, that the Section of the Act of May 31, 1870, which this count charges the parties with conspiring to violate, declares no penalty for the offense.

The first Section of the Act declares a right. It is referred to in this count by its number, and with sufficient certainty, it seems to us, to enable the parties charged, after trial, to plead the verdict rendered in this case in bar to another indictment. After declaring the right, the statute proceeds, in Section 7, to define the punishment for its violation. It is not necessarily, it seems to us, that each Section of the Act should contain or disclose the penalty for its infraction. That is often, as in this statute, referred to a later, and generally to the closing, Section of the Act defining the crime or offense, and is made applicable to all the antecedent Sections.

It is objected, moreover, that this count does not contain the names of the parties who, being entitled to vote, were to be hindered and prevented from the exercise of the elective franchise by the traversees. It must be remembered that this is not an indictment to punish a wrong done to individuals, against the peace and dignity of the United States, but for a conspiracy to do that wrong. The offense is completed the moment the compact is formed, whether any person, within the contemplation of the first Section, has actually been hindered or not. If the traversees never committed any overt act, but separated and went home after the completion of the conspiracy, they have incurred the penalty which the seventh Section prescribes. So it makes no difference what particular person the conspiracy, when put in motion, first reached. The act complained of is the conspiracy; and if it be true that any person was hindered or prevented from the exercise of the right granted by the first Section, such hindrance and prevention is only proof of the conspiracy, and does not in anywise tend to make the crime more complete.

It is generally sufficient, in charging a statutory offense, to set it out in the words of the statute. If the statute was a common law name for a crime which it proposes to punish, the indictment must set forth the various ingredients of the crime which go to make up the offense at common law. But when the statute itself creates the offense and defines it, it is sufficient, if the indictment uses the words of the statute, unless the words be indefinite and vague, ambiguous or general, in which case the indictment must so particularize the act complained of that the party charged shall be in no doubt of the offense alleged against him. The certainty required is that which will enable him to plead the verdict in bar of any future action.

It is alleged, in this count, that this conspiracy was to go into operation at an election not yet held, to wit, the third Wednesday of October, 1872, and it is objected that this is not sufficient; that

the right to vote is not a continuing right, but exists only at the time of its immediate exercise. It would be strange, indeed, if parties could not be punished, if it be necessary to punish them at all, for any offense but those committed against this Act on election day, and in the direct exercise of the elective franchise. The usefulness of the Act of Congress would be entirely frustrated by such requirement. A man may be so effectually intimidated weeks before an election that he would not dare to go within a mile of the polls, and all the mischief the Act is intended to remedy would flourish, and no punishment could be awarded them, under this construction, because the right to vote is not a subsisting right, but one which recurs to the citizen on election day. We do not so hold.

The uncertainty which the count leaves as to whether this was a State election or a Federal is urged as fatal. The indictment charges that this was a conspiracy to violate the first Section of the Act. This Section declares that all citizens shall be allowed to vote at all elections who are qualified by law to vote, without distinction of race, color or previous condition of servitude. Congress has never assumed the power to prescribe the qualifications of voters in the several states. To do so is left entirely with the states themselves. But the Constitution has declared that the states shall make no distinction on the grounds stated in this first Section; and, by this legislation, Congress has endeavored, in a way which Congress thought appropriate, to enforce it. It is this Act of appropriate legislation, and the first Section of it, which the defendants are charged with violating, and we think it makes no difference at what election, whether it be State or Federal, he is intimidated or hindered from voting because of his race, color or previous condition of servitude.

Congress may have found it difficult to devise a method by which to punish a State which, by law, made such distinction, and may have thought that legislation most likely to secure the end in view which punished the individual citizen who acted by virtue of a State law, or upon his individual responsibility.

If the Act be within the scope of the amendment, and in the line of its purpose, Congress is the sole judge of its appropriateness.

The next objection, which is that the count does not set forth the qualification of the voter, is sufficiently answered, we think, in the remarks we have made respecting the requirements of indictments setting forth statutory offenses.

We are of opinion that the second count of the indictment is bad, because it does not allege that Amzi Rainey was qualified to vote; and for another reason, more fatal, that it alleges the right of Rainey to vote to be a right and privilege granted to him by the Constitution of the United States. This, as we have shown, is not so. The right of a citizen to vote depends upon the laws of the State in which he resides, and is not granted to him by the Constitution of the United States, nor is such right guaranteed to him by that instrument. All that is guaranteed is, that he shall not be deprived

of the suffrage by reason of his race, color, or previous condition of servitude.

The third count is a repetition of the second, with a clause setting out a charge of burglary. Concerning the Court's jurisdiction over such charge, the Court is divided in opinion, and will, therefore, make no comment on it at this time.

The fourth count is obnoxious to the objection that neither the citizenship of Rainey nor the fact of his qualifications to vote is not set out.

The fifth count repeats the charge contained in the fourth, with the additional clause contained in the third count, and the Court refrains from noticing it, for the reasons given as to the third count.

The sixth count is intended to charge a conspiracy to oppress Rainey for having, prior to 1st February, 1871, exercised the right of suffrage; and would be good if it were drawn with the particularity of the first count, which charges a conspiracy to oppress, to prevent the future exercise of this right. It does not, however, contain any allegation of the fact of qualification, nor that the party was entitled to vote in York County, or anywhere else, or that he ever exercised his right to vote.

The seventh count is a repetition of the sixth, with the charge of burglary added, as in the third count.

The eighth count alleges a conspiracy to prevent and hinder Rainey from the exercise of a right secured to him by the Constitution of the United States, which is defined to be the right to be secure in his person and papers against unreasonable search. The Article in the Constitution of the United States, to enforce which this count is supposed to be drawn, has long been decided to be a mere restriction upon the United States itself. The right to be secure in one's house is not a right derived from the Constitution, but it existed long before the adoption of the Constitution at common law, and cannot be said to come within the meaning of the Act "right, privilege or immunity granted or secured by the Constitution of the United States."

The ninth count is entirely too indefinite, and the defendants could not possibly know, from its language, with what offense they were charged; and the same objection is valid as to the tenth count.

The eleventh, and last count of the indictment, charges a conspiracy to injure Rainey because he had previously voted for a member of Congress. We have no doubt of the power of Congress to interfere in the protection of voters at Federal elections, and that that power existed before the adoption of either of the recent amendments. It is a power necessary to the existence of Congress, and this count seems to set forth the charge with sufficient perspicuity, and is not liable to the objections urged against it.

The motion to quash is overruled as to the first and eleventh counts of the indictment, and sustained as to the others, excepting such as the Court is divided respecting.

Sherod Childers, alias "Bunk" Childers, was first arraigned, and after hearing read the first and last counts in the indictment:

The Clerk. How say you; are you guilty or not guilty?

The Prisoner. Not guilty.

The Clerk. Are you ready for trial?

The Prisoner. No, sir; my witnesses are not here.

JUDGE BOND. We do not propose to go to trial. Who is counsel for the party?

Mr. Wilson. I am his counsel.

JUDGE BOND. Are you ready?

Mr. Wilson. No, sir.

Mr. Corbin. If it please the Court, I would like to know whether we are trying cases here at the pleasure of the United States, after proper notice to all the parties, or at the pleasure of the prisoners. We have given these parties nearly four weeks' notice, of every charge, and to be ready for trial, and I think the government has spent time and money enough.

Mr. Johnson. They have spent quite money enough.

JUDGE BOND (to Mr. Johnson). The Court understands you are not counsel in this case.

Mr. Wilson. He is associated with me; he and Mr. Stanbery.

Mr. Hart. If your Honors will permit me, I will make a statement. On last Saturday Mr. Wilson was not present in Columbia, and I temporarily took charge of this case. I think, on Friday previous, I applied to your Honors for an order to have witnesses summoned at the expense of the Government in certain cases. Your Honors then declined to issue the order, and led me to believe that possibly such an order would not be issued. On Saturday that order was granted, but as no mail left until Monday, I presume the subpoenas did not reach these witnesses before Tuesday, and yesterday probably was the day on which they were served. They may not reach here before today or tomorrow.

Mr. Corbin called the attention of the Court to page 590 of Conklin's Treatise, in which Chief Justice Marshall, on the trial of Burr, made use of language in relation to unnecessary delay on the part of the defense, and applied the words of the Chief Justice to the desire, on the part of the defendant's counsel for delay, in this matter, and said: Now this party was arrested some four weeks ago, and soon after, or at least two weeks before the term, was notified that he must be ready for trial at this term. Two weeks of the term have gone by, and yet he is not ready. In the language of the Court, in this Burr case, he *must be ready for trial*.

JUDGE BOND. It is not asking a delay until next term, but merely to get his witnesses here. We will go on and impanel the jury today.

The COURT called as a juror, Andrew W. Curtis, colored.

The Prisoner. I reject him.

Mr. Corbin. We object to the prisoner's right of peremptory challenge.

Mr. Stanbery. We are entitled not only to one, but ten of these challenges.

(After argument by *Counsel* on both sides.)

JUDGE BRYAN. The rule I think is clearly stated in the case of *Reid*, 2 Blatchford 247; and the application of that rule is, that you must show that, at the time this Act was passed, under the law of South Carolina, (that is, common law, as modified by the Legislature of South Carolina—the laws of South Carolina prevailing at that time,) the right existed. That is the rule, and when that is explicitly the rule, then under that law you are entitled to peremptory challenge. Under the recent enactment of Congress, peremptory challenge is not limited to capital cases. In my judgment, the right of challenge extends to all cases to which the right of challenge extended in 1789, when this Judiciary Act was passed. This ruling of Howard, accepting the law of the States at that time, or the common law, as modified by the legislation of the States, at that time, is the rule governing the Courts of the United States. That is, the same laws which prevailed in the State Courts at that time would prevail in the United States Courts. If, therefore, the right of challenge existed at that date, then the right of challenge was extended by Congress to cases other than those not capital, and to felonies not capital. That is my judgment.

JUDGE BOND. I am of opinion that the right of challenge is determined by the number of challenges allowed at common law; and that at common law, in no case, is the right of challenge allowed but in capital cases; and that the Judiciary Act adopts the number of the common law. I think with Mr. Justice Nelson that, in these cases, the right of challenge does not exist—the right of peremptory challenge.

Mr. Johnson. Do your Honors divide upon the point?

JUDGE BOND. So far, Mr. Johnson, as this case is concerned; as my associate has, apparently, given it some consideration, I am ready to yield the point to his judgment, and allow you the peremptory challenge.

December 9.

The prisoners, Sherod Childers, Evans Murphy, William Montgomery and Hezekiah Porter, the only ones under arrest, were brought into court, and each, for himself, pleaded *guilty* to the first and eleventh counts in the indictment.

The *Counsel* on both sides made arguments as to the measure of punishment.

JUDGE BOND. Gentlemen, we will determine this question when we pronounce judgment of the Court on the indictment, and not now.

December 28.

The prisoners, Sherod Childers, Evans, Murphy, Heskiah Porter and William Montgomery were placed at the bar. As each prisoner arose to receive his sentence, he was interrogated closely by the presiding JUDGE as to his connection with the conspiracy. They said:

Sherod Childers. Live in York county; 23 years old; joined the Ku Klux Klan at the election; Chief of our Klan was Aleck Smith; have been in one raid against Amzi Rainey; voted the Radical ticket, and I had to join in that way; didn't do anything to Rainey; nothing, as I seen; wasn't up to the house; met at Bullock's Creek Bridge; Allen Crosby, Sylvanus Hemphill, Evans Murphy, Ki Porter; Van Hemphill brought me word to meet there; went to do anything that we were told to do; they told me to meet the Klan there; and I met. They didn't tell me; was in disguise; that was the rule of the order; didn't hear we were going to do anything wrong; I can't read and write; for a living I do farming; work for myself; have a family; my wife and one child.

JUDGE BOND. Childers, in consideration of the fact that you have pleaded guilty, and shown to the Court by that that you have a measure of repentance, the Court will not be as severe as it would be otherwise. You have not told me the truth though; you were in the Big Billy Wilson raid, too. The witnesses on the other cases have so stated. The judgment of the Court, in your case, is that you be fined one hundred dollars, and be imprisoned for the term of eighteen months. Sit down.

William Montgomery. Am going on nineteen; can read print, but can't write; wasn't in the Confederate army; was on the raid that they got me on—the Amzi Rainey; joined the Klan in February, some time; on this Rainey raid I never done anything; staid with the horses; from Amzi Rainey's I went home; didn't go with any other expeditions that night; nothing was done to Rainey as I know of.

JUDGE BOND. Montgomery, the judgment of the Court, in your case, is that you be fined one hundred dollars, and be imprisoned for eighteen months.

Evans Murphy. My business is farming; my family is seven besides myself; four children and sisters-in-law; never been on but one raid; never saw any one whipped at all; I didn't do anything myself, nor I didn't see anything done; never saw anybody struck that night; I don't think there was any lick struck; if there was, I wasn't in it; I don't know what they all done; didn't do anything myself; some say that the party went to Rainey's; I was not there; have never been at the house; didn't know where Rainey lived. They never said they had done anything. They run off and left me, and several others, Mr. Kirkpatrick and James Pursely and Allen Crosby, and Childers and Porter. They all got

off, and left us. Me, and Childers, and Allen Crosby, and Kirkpatrick, and James Pursely, and Porter. If there was any whipping done, I didn't know it; was going home from work and met up with them, and they asked me to go along; said they were going to ride around a piece that night; didn't say for what purpose, nor I didn't ask them.

JUDGE BOND. The judgment of the Court is, in your case, that you be fined one hundred dollars, and be imprisoned for eighteen months.

Hesekiah Porter. Am nineteen years old; have been on one raid; on Rainey; don't know as there was anything done to him; met with them down there at Bullock's Creek Bridge; I was warned to go there by Sylvanus Hemphill; Chief of our Klan was Aleck Smith; we disguised and went off, on across the bridge; I reckon they went to Rainey's; I went down to the bridge, and then across the branch up in the old field; were hunting for the other fellows; they went off and left us; nobody was whipped that night that I know of.

JUDGE BOND. From the fact that you have pleaded guilty, the judgment of the Court is, that you be fined one hundred dollars and imprisoned for eighteen months.

THE TRIAL OF ROBERT HAYES MITCHELL FOR CONSPIRACY, COLUMBIA, SOUTH CAROLINA, 1871.

THE NARRATIVE.

In this trial the facts were gone into at great length and a large number of witnesses were examined. The Government proved the existence of an organization, perfect in all its details, armed and disguised; that this organization was bound together by a terrible oath, the penalty for breaking of which was declared to be the doom of a traitor—death! death!! death!!! It showed that this organization had a constitution and by-laws, regulating, in detail, all the duties of its members; that it pervaded the whole county, or a large portion of it; that it was inaugurated in 1868; that its active operations were somewhat suspended during the years 1869 and 1870, but that in 1871, particularly, it became very active; that great numbers of colored citizens, who were entitled, by law, to vote, in that county, were visited by the Klan, and whipped, and many of them murdered. And in particular it proved that the organization had deliberately planned and executed the murder of a negro, Jim Williams; that the members of the Klan that did this killing consisted of some fifty or sixty persons, which met at what was called in the county, the "Briar Patch," an old muster field, armed, disguised and mounted; that under the command of a leader, J. W. Avery, the gang proceeded to the house of Williams, broke in his door, took him out, fastened a rope about his neck, took him to the woods near by, and hung him till he was dead. That they left a card upon him, which was found on the morning following the execution, containing the words, "Jim Williams on his big muster." That, on the same night, they visited divers other houses of colored

people, threatened them, took them out, robbed them of their arms, and informed them that, if they should vote again, they would be killed.

While it was shown that Robert Hayes Mitchell was a member of the Ku Klux Klan and a prominent one, and was present at many raids, it was not certain that he had been present when Jim Williams was murdered or that he had knowledge of the intention of the parties who committed that crime. So, though found guilty on the indictment, he escaped with a sentence of fine and imprisonment.

THE TRIAL.

*In the United States Circuit Court, Columbia, South Carolina,
December, 1871.*

HON. HUGH L. BOND,
HON. GEORGE L. BRYAN, } Judges.

December 11.

The prisoner, *Robert Hayes Mitchell*, had been indicted by the grand jury for conspiracy: 1st, to prevent colored voters of that county from exercising the right to vote; 2nd, to oppress, threaten and intimidate one Jim Williams, a negro, because he had exercised the right to vote at an election in October, 1870; 3rd, to prevent certain persons from exercising a right secured to them by the Constitution of the United States, viz., the right to keep and bear arms.

D. T. Corbin and *D. H. Chamberlain* for the United States.

Henry Stanbery and *Reverdy Johnson* for the prisoner.

Mr. Stanbery. We move to quash the third count of the indictment. The right to bear arms is not secured by the Constitution of the United States, but stands in the nature of a bill of rights. It is a restriction upon Congress against interfering with that right. It is one of the rights of the State.

December 12.

After argument on the motion to quash the third count in the indictment:

JUDGE BOND. The Court is not prepared to decide that case this morning.

Mr. Corbin. Well, if the Court please, we will tear the indictment to pieces, and withdraw that count. We are determined to go to trial on something. We ask the Court to withdraw that count.

The Prisoner pleaded not guilty.

The following *jurors* were sworn: January Simpson, William Smith, Ephraim Johnson, Franklin I. McMichen, James McGill, Gabriel Cooper, Joseph Taylor, William Mooney, Philip Saltors, William F. Dover, Joseph Keene, Isaac Black (all the jurors but two were negroes).

Mr. Corbin. May it please the Court and gentlemen of the jury, the case now to be presented to you is one of an unusual importance. It is one of a somewhat startling character in this country. The defendant, who is now called before you, is charged with having entered into a conspiracy for the purpose of preventing and restraining divers male citizens of the United States, of African descent, and qualified to vote, from exercising the right of voting.

We shall first show you that he entered into a general conspiracy, existing in the County of York, for the purpose of preventing colored voters of that county from exercising the right to vote.

We shall prove the existence of an organization, perfect in all its details, armed and disguised; that this organization was bound together by a terrible oath, the penalty for breaking of which was declared to be the doom of a traitor—death! death!! death!!! We shall show that this organization had a constitution and by-laws, regulating, in detail, all the duties of its members; that it pervaded the whole county, or a large portion of it; that it was inaugurated in 1868; that its active operations were somewhat suspended during the years 1869 and 1870, but that in 1871, particularly, it became very active; that great numbers of colored citizens, who were entitled, by law, to vote, in that county, were visited by the Klan, and whipped, and many of them murdered. In this case, we shall show to you that this organization deliberately planned and executed the murder of Jim Williams,

whose name you will find in this indictment, in pursuance of the purpose of the organization. We shall prove to you, gentlemen, that the defendant was present, aided and assisted in carrying out the purpose of the organization; and was present at the execution of Jim Williams.

The details will all come out in proof. The raid—as it was called in that county—that killed Jim Williams, consisted of some forty, fifty or sixty persons. It met at what is called, in the County of York, the “Briar Patch,” an old “muster” field, armed, disguised and mounted; that, under the command of a leader, J. W. Avery, this organization proceeded to the house of Jim Williams, broke in his door, took him out, fastened a rope about his neck, took him to the woods nearby, and hung him till he was dead. That they left a card upon him, which was found on the morning following the execution, containing the words “Jim Williams on his big muster.” That, on the same night, they visited divers other houses of colored people, threatened them, took them out, robbed them of their arms, and informed them that, if they should vote again, they would be killed. Gentlemen, this comprises, in brief, all that we desire to say to you in the opening. We proceed on the first count of this indictment, under the sixth section of an Act of May 1, 1870.

The second count in this indictment, and it contains but two charges that this defendant, and divers other evil disposed persons, at York County, etc., did conspire together, with intent to oppress, threaten and intimidate Jim Williams, male citizen, etc., because he exercised the right and privilege of voting on the third Wednesday of October, 1870.

We shall endeavor to show that this attack upon Jim Williams was, not only for the purpose of preventing his voting in 1872, but because he had exercised the right and privilege of voting in 1870.

We shall ask you to particularly listen to the witnesses. Many of them are ignorant, and many of them never appeared in court before, and are unaccustomed to the trials of the witness stand.

THE WITNESSES FOR THE GOVERNMENT.

Lieutenant Godfrey. Am an officer of the U. S. army; was ordered on 20th of October to go to the house of Samuel G. Brown and obtain the constitution and by-laws of the Ku Klux Klan. Mr. Brown gave me an order to his daughter who took the paper, produced from his desk and gave it to me. This is the paper.

Albertus Hope. Was a member of the Ku Klux; went to a meeting at which I was elected chief. The condition of the up-country demanded something at that time. They had been burning and making threats in the country. Word was left at my house to go to that meeting; came very near not going; when I did go, I asked the object of the meeting and was told that as there had been so much burning and threats round our county, that it was necessary we should know where to get assistance.

Mr. Stanbery. Who had made threats? A freedman by the name of Mick Moon. Did you hear him make that? No, sir.

Mr. Johnson. What was your motive in going to the meeting in March, 1871? For self-defense and the protection of those that were helpless in my neighborhood. I walked my yard several nights. We could not sleep. There were several fires around us; do not know how they came; these threats came from a portion of the colored race; the raids were made generally by whites generally called Ku Klux.

Kirkland L. Gunn. During my residence in Yorkville was a member of the Ku Klux Klan. The obligation I took was I should not divulge any part of the secrets of the Klan; and it was for the purpose of putting down Radical rule and negro suffrage. Heard the constitution and by-laws of the order read when I was initiated. I was knelt down and the oath and constitution and by-laws were read to me. This paper the same that I heard read.

Mr. Chamberlain read the document, as follows:

Obligation.

I, (name) before the immaculate Judge of Heaven and Earth, and upon the Holy Evangelists of Almighty God, do, of my own free will and accord, subscribe to the following sacredly binding obligation:

1. We are on the side of justice, humanity and constitutional liberty, as bequeathed to us in its purity by our forefathers.
2. We oppose and reject the principles of the Radical party.
3. We pledge mutual aid to each other in sickness, distress and pecuniary embarrassment.
4. Female friends, widows and their households shall ever be special objects of our regard and protection.

Any member divulging, or causing to be divulged, any of the foregoing obligation, shall meet the fearful penalty and traitor's doom, which is Death! Death! Death!

Constitution.

Article 1. This organization shall be known as the — Order No. —, of the Ku Klux Klan, of the State of South Carolina.

Article 2. The officers shall consist of a Cyclops and Scribe, both of whom shall be elected by a majority vote of the order, and to hold their office during good behavior.

Article 3. It shall be the duty of the C, to preside, in the order, enforce a due observance of the constitution and by-laws, and an exact compliance to the rules and usages of the order; to see that all the members perform their respective duties; appoint all committees before the order; inspect the arms and dress of each member on special occasions; to call meetings when necessary; draw upon members for all sums needed to carry on the order.

Sec. 2. The S. shall keep a record of the proceedings of the order, write communications, notify other Klans when their assistance is needed, give notice when any member has to suffer the penalty for violating his oath, see that all books, papers or other property, belonging to his office are placed beyond the reach of any but members of the order. He shall perform such other duties as may be required of him by the C.

Article 4—Section 1. No person shall be initiated into this order under eighteen years of age.

Sec. 2. No person of color shall be admitted to this order.

Sec. 3. No person shall be admitted into this order who does not sustain a good moral character, or who is in any way incapacitated to discharge the duties of a Ku Klux.

Section 4. The name of a person offered for membership must be proposed by the Committee appointed by the Chief, verbally, stating age, residence and occupation; state if he was a soldier in the late war; his rank; whether he was in the Federal or Confederate service, and his command.

Article 5—Section 1. Any member who shall offend against these articles, or the by-laws, shall be subject to be fined, and reprimanded by the C. as two-thirds of the members present at any regular meeting may determine.

Sec. 2. Every member shall be entitled to a fair trial for any offense involving reprimand or criminal punishment.

Article 6—Section 1. Any member who shall betray or divulge any of the matters of the order, shall suffer death.

Article 7—Section 1. The following shall be the rules of order. Any matter herein not provided for shall be managed in strict accordance with the Ku Klux rules:

Sec. 2. When the Chief takes his position on the right, the Scribe, with the members, forming a half circle around them, and, at the sound of the signal instrument, there shall be profound silence.

Sec. 3. Before proceeding to business, the S. shall call the roll and note the absentees.

Sec. 4. Business shall be taken up in the following order:

1. Reading the minutes.
2. Excuse of members at preceding meeting.
3. Report of Committee of candidates for membership.
4. Collection of dues.
5. Are any of the order sick or suffering?
6. Report of committees.
7. New business.

By-Laws.

Article 1—Section 1. This order shall meet at —.

Sec. 2. Five (5) members shall constitute a quorum, provided the C. or S. be present.

Sec. 3. The C. shall have power to appoint such members of the order to attend to the sick, the needy, and those distressed, and those suffering from Radical misrule, as the case may require.

Sec. 4. No person shall be appointed on a committee unless the person is present at the time of appointment. Members of committees neglecting to report shall be fined thirty cents.

Article 2—Section 1. Every member, on being admitted, shall sign the constitution and by-laws, and pay the initiation fee.

Sec. 2. A brother of the Klan, wishing to become a member of this order, shall present his application, with the proper papers of transfer from the order of which he was a member formerly; shall be admitted to the order only by a unanimous vote of the members present.

Article 3—Section 1. The initiation fee shall be —.

Article 4—Section 1. Every member who shall refuse or neglect to pay his fines or dues, shall be dealt with as the Chief thinks proper.

Sec. 3. Sickness, or absence from the county, or being engaged in any important business, shall be valid excuses for any neglect of duty.

Article 5—Section 1. Each member shall provide himself with a pistol, Ku Klux gown, and signal instrument.

Sec. 2. When charges have been preferred against a member in a proper manner, or any matters of grievance between brother Klux are brought before the order, they shall be referred to a special committee of three or more members, who shall examine the parties and determine the matters in question, reporting their decisions to the order. If the parties interested desire, two-thirds of the members present voting in favor of the report, it shall be carried.

Article 6—Section 1. It is the duty of every member who has evidence that another has violated Article 2, to prefer the charge and specify the offense to the order.

Sec. 2. The charge for violating Article 2 shall be referred to a committee of five or more members, who shall, as soon as practicable, summon the parties and investigate the matter.

Sec. 3. If the committee agree that the charges are sustained,

that the member on trial has intentionally violated his oath, or Article 2, they shall report the fact to the order.

Sec. 4. If the committee agree that the charges are not sustained, that the member is not guilty of violating his oath, or Article 2, they shall report to that effect to the order, and the charges shall be dismissed.

Sec. 5. When the committee report that the charges are sustained, and the unanimous vote of the members is given in favor thereof, the offending person shall be sentenced to death by the Chief.

Sec. 6. The prisoner, through the Cyclops of the order of which he is a member, can make application for pardon to the Great Grand Cyclops of Nashville, Tennessee, in which case execution of the sentence can be stayed until pardoning power is heard from.

Mr. Gunn. Now those purposes were to be carried into effect by killing off the white Radicals, and by whipping and intimidating the negroes, so as to keep them from voting for any men who held Radical offices. They did this at night time. The organization was armed, pistols, sometimes shot guns, muskets, &c. The Ku Klux gown referred to in the by-laws is a large gown made of some solid colored goods; don't know what the color was; never saw a gown in daylight. These gowns are worn to disguise the person. Have been on two raids; the order for a raid is given by the Chief; the officers are known as Night Hawks. The first I was on was the Bill Kell raid; the order was given by John Wallace, a Night Hawk, on John Mitchell's Klan; was a member of that Klan. We went where the meeting place was, and met several men there, among them was Hugh Kell, and, when he was found to be there, the Chief declined going on the raid. The purpose of raiding on Bill Kell was to kill him, because he was president of a Union League. Was also in the raid upon Jennie Good; was Chief of the Klan that was going to make

that raid. Members of the order could be called upon from one Klan by the other. On Charley Byers' raid on Roland Thompson's plantation I met Byers, Wesley Smith, Joe Smith and others; did not go on that raid, because I had no saddle to ride. The object of the raid, I was told, was that they wanted to drive this negro woman from Dr. John Good's premises; that she was a nuisance to his wife, and they thought it a duty of the order to drive her away from there. The password was, if you met any one in the night, you should spell the word I-s-a-y, and not pronounce it; if it was a member of the order whom you met, he would spell N-o-t-h-i-n-g, and not pronounce it. That signal whistle spoken of in the by-laws was a shrill, gurgling noise. Each member was required to have a whistle to give signals with. If the Chief sounded his whistle, and they were marching, they were to stop, and if they were standing the sound of his whistle meant to march on. Know Squire Samuel G. Brown, of York county. He told me he was Chief of his Klan, or told it to Wesley Smith in my presence,

sir. He and Wesley Smith were in conversation, and I stepped up, and he gave me the sign, which I returned. He said, "I can kill and whip more damned niggers with my Klan than all the rest of York county." Cannot give any correct idea about the number of Klans, but I think the majority of the white people of York county belong to the order. Only three I had any connection with, John Mitchell's, Charley Byers' and Bob Burris'; Burris only had twenty members; Byers, I think, seventeen; don't know the number of Mitchell's. Heard Mitchell, who ordered the raid on Bill Kell, say it was for the purpose of killing him for being a president of a Union League. This organization went beyond the limits of this state; met the same order in Georgia, sir. Know J. W. Avery, of Yorkville; do not know whether he is a member of the Ku Klux order; understood he was; do not know whether or not he is connected with the order.

Cross-examined. I was solicited by Mr. Smith and others to join this order; was told if I did not join it, it would go hard with me if anything should turn up; that if they got into power, they would work for us. That the Klan of which I had become a member had for their chief Mr. Mitchell there; met Mr. Mitchell at the meeting of the raid, known as the Bill Kell raid in York county, near Bilk's Creek Bridge, called Barclay's Hill; Mitchell was in disguise when he came out there to Barclay's Hill. I saw Wiley Harris, Charles Foster and Edward Leech. Wiley was the man who gave Mitchell his disguise to put away; that

was the only occasion on which I saw Mitchell. Met next at Charles Byers' Klan about a week after on Mr. Thompson's plantation at night. First told anyone, not of the Klan, that I was one of the Klan last June to my brother-in-law, Mr. Macaulay in Georgia. It was after this I made the disclosures to others; in September at Cartersville, Ga.; to the Attorney General of the United States, Mr. Ackerman; told him I was a member of the body. He took a statement from me. After that attended no other meetings; still making believe that I was a Ku Klux; did not receive any employment or any compensation for my services; was never promised anything. Afterwards I went with my friends to see Washington City; found it a fine city; that was my only business. Saw Mr. Ackerman with Colonel Baker and some friends who had claims against the government. We spoke about matters, but not about Ku Klux matters; stayed in Washington a week; did not visit Mr. Ackerman a second time. In Washington received from the Attorney General's clerk two hundred dollars to defray expenses in going to Cartersville and other places, to see Mr. Ackerman.

Charles W. Foster. Was born and reside in York county; have lived there since the surrender; joined the Ku Klux about the 15th of December last; Aleck Smith's Klan first, and was transferred to John W. Mitchell's. Remember the oath I took; the first was to protect women and children, put down Radicalism—put down Union Leagues, &c. The penalty was if a man di-

vulged any secret of the society, he was to suffer death! death!! death!!! (Counsel read the oath as read to Gunn.) That is about the same that we had. The purposes of the order were to be carried out by whipping the men who belonged to the Union League—both white and black. The understanding was, they never were to go in disguise only of a night; show no signs in the day time. Towards the last of the Ku Kluxing there was no man allowed to give any signs.

The COURT. We want to get what was the understanding of the persons who signed that paper.

The understanding of the persons who signed the paper was not to divulge any secrets; to attend all meetings; to go on all raids that was ordered. They were to be fined a certain fee, whatever the Klan pleased to put on them, if they did not. The raids were to put down Radicalism. Was at one regular meeting; that was when the Klan was organized; was on two other meetings after that to go on raids. We were ordered to meet at Howell's Ferry, and went and whipped five colored men. Presley Holmes was the first they whipped and they went on and whipped Jerry Thompson; went then and whipped Charley Good, James Leach, and Amos Howell. The men on these raids were more than twenty; they had red gowns, and had white covers over their horses. Some had pistols and some had guns. The object in whipping Presley Holmes was for some threats he had made about going to be buried in Salem graveyard. They dragged him out, and led

him off, stripped his shirt and whipped him. They whipped Jerry Thompson at the next place about some threats he had made about an old soldier. He said he would kick the old soldier's hind parts; told him never to go to any more meetings; to stay at home and attend to his own business. At the next place they whipped Charley Good; he was supposed to be an officer in the League. They whipped him very severe; they beat him with a pole and kicked him down on the ground; told him to let Radicalism alone; not to go to any more League meetings; if he did, his doom would be fatal. They went then to Charley Leach's, at Mathew Smarr's house. They whipped him. The second raid we were ordered to meet in an old field, below Dr. Whiteside's. Julius Howe was leading the Klan that night. The first place they stopped was at Mrs. Watson's; called for a nigger there, but he was sick and they didn't disturb him; went on then to Mr. Moore's quarter, and there they got a double-barrelled shot gun; didn't whip anybody though; went on down to Theo. Byers'; they didn't do anything there; and then they went to Chancellor Chambers', and got a gun there. Went on down to Ed. Byers' or Theo. Byers' place, I don't know which; they whipped a couple of niggers there; one pretty severe; he was named Adolphus Moore; think that the impression was that they had been concerned in some burning, probably. These parties had no trial; if they had it was unknown to me. Most of the members of the Klan had been soldiers. Some were young

boys. Captain Mitchell was a captain in the war. We met some more men there, Rattlesnake Klan, from Sharon, Will Johnson's. We went down to Wilson Wilson's. The whole party stopped in his yard, and, after Mitchell's Klan went on, the Rattlesnakes went back and whipped him, and like to have killed him. Then they went down after a black man by the name of John Thompson, who was accused of burning. They were going to whip him. They found Mr. Wilson in his house. They called him out and talked to him. He was called a Radical in the neighborhood; he had taught a nigger school and voted the Radical ticket; told him to let Radicalism alone. Some of them punched him a little, and probably kicked him when he went back into the house. They told him if there was any more burning done within ten miles of his neighborhood they would take his life; they would hold him responsible for all the burnings in the neighborhood. The whipping of Presely Thompson was because he says he wanted to be buried in a white person's graveyard. Jerry Thompson had said he would kick an old soldier's hind parts.

Osmond Gunthorpe. Reside in York county; joined the Ku Klux Klan 1868; was initiated by Dr. Edward T. Avery. The substance of the oath I took was that we was opposed to the Radical party; and we was to protect fellow members' widows and their households, female friends. The penalty for divulging the secrets of the organization was death. It was the intention of the organization to control elec-

tions by intimidation. I understood the day of election in 1868, they were not to use any force, but by crowding the box, they were to keep all from voting they could; all of the Radical party; left the order because it was not what I thought it to be. I found when I went in that it was a political organization. I thought it was an organization for the protection of each other, but not to interfere with any other party. I found it to be a political organization, to try to control the elections for the Democratic party, at that time.

Cross-examined. When I joined the order and took the oath, I had no idea it had any political significance. I understood it was an organization for the protection of each other. There was a general talk that there was a danger of the negroes rising. When I came into the order, I took the oath; it was not read to me—it was repeated to me; have heard this oath read here. Have never been at any election since last year, and nobody was interfered with at that. There were many voters there, colored and white, and no man was interfered with. At the time I joined the order there was some little negro alarm, a talk that the negroes were up in arms, and we were afraid that they would do something.

Andy Sims. Knew Jim Williams before he died; had been knowing him for fifteen or twenty years; he was a resident and voter in York county; he voted a Republican ticket. That night, I think something after 2 o'clock there were three disguised men came to my house, cussing and

swearing. They said: "Here we come—we are the Ku Klux. Here we come right from hell," and two rode up on one side of my house, and one to the other. They commenced with their guns and beat at the doors, and hollering "G—d d—n you, open, open the doors." Before I got to the door they bursted the latch off, and two came in, and one got me by the arms and says, "we want your guns." Told them I didn't have any guns; there was one there, but not mine; they asked for a pistol; told them I didn't have any pistol at that time; they asked if I knew where Captain Williams lived; told them about two miles; says he, "we want to see your captain to-night; we don't want any more of you to-night." Asked me if I knew any of them; told them I did not know them; they got on their horses and bid me good night; about 50 yards from my house they stopped, talking very low to each other; I jumped out and started down across to the other house, and met Henry Haynes and Andrew Bratton, colored; they heard them and left their houses. We went down to Captain Williams'; Williams was not there; passed where Mr. Williams' company were—the militia; we followed the course the Ku Klux had went; we tracked them then, by bayonets and accoutrements, &c.; concluded to hunt for Williams; we went across the country to Williams', and before we got to the house we saw the tracks, where they had come out of the field; we pursued on until we came to where the horses were hitched; we saw Williams hanging on a tree, dead. There was a paper

on his breast; the foreman of the jury said it said "Jim Williams on his big muster." I went from there to York, after the coroner; he hung there till we came back, and the jury all met.

Cross-examined. Jim Williams was formerly called James Rainey. He was captain of a company; The company was armed with Enfield rifles. They fired away a good deal before election trying their guns. I was clerk of the company. I went to the election in October. This militia company went there to vote. Some of them did carry their side-arms, their bayonets, etc. I have heard guns fired at night, sometimes; there was some uneasiness felt in the county on that account. Do not recollect our Captain, Jim Williams, saying Mr. Rose had given him some instructions what to do about burning houses; did hear it reported that he said if the Ku Klux got to killing, and was killing off the black people, it was then for them to burn the houses. When I went down to see John Bratton, found part of Jim's company there with their arms. Heard an expression from Williams of this kind: That if his party failed he expected to kill from the cradle to the grave. Heard that from Ed Crawford, the night he was hung, the night he came on me for the guns, he told me that. Saw Jim vote; nobody attempted to interfere with him; there was no disturbance that day. The colored people carried their side arms; their bayonets; the election went off very pretty. Those arms were said to be sent to the company by the governor; that was what

was said, I don't know. Don't know of any white company getting guns.

Gadsden Steele. Voted at the last election in York county; am twenty-six. I voted the Radical ticket for Mr. Wallace. The Ku Klux came to my house about ten o'clock. I was asleep; my wife woke me up, and told me she heard a mighty riding; thought it was Ku Klux. I jumped up, looked out, and seen the men; they came in and called for me to give up my gun, and I says I has no gun; they all grabbed me and took me out into the yard. They was all disguised, and struck me three licks over the head, and jobbed the blood out of me, took me to Mr. Moore's and asked Mr. Moore if I had a gun; and he said no, not that he knew of; and they asked if I had a pistol, and he said no; they asked if I belonged to Jim Williams' company; he said no. Asked him was I bad boy, and run about into any devilment; he said no; I was a very fine boy, as far as he knew; they asked how I voted; he said I voted the Radical ticket; they says, "There G—d d—n you, I'll kill you for that;" they took me out in the lane, and says, "come out and talk to No. 6;" and marched me out to No. 6; he was sitting on his horse; he bowed his head down to me, and says, "How do you do," and horned me in the breast with his horns; had horns on the head about so long; they punched me and said, "Stand up to him, G—d d—n you, and talk to him;" he told me to tell him who had guns; told him I knew a heap that had guns, but hadn't them now; they had done give them up; well, says he, ain't Jim

Williams got the guns? I says I heard folks say that he has them, but I do not know. Then he said to me: "Show us the way to Jim Williams' house," if you don't we will kill you; and then one looked up to the moon and says: "Don't tarry here too long with this d—n nigger; we have to get back to hell before daybreak. Got on a mule behind but the rider hollowed to No. 6 that he could not keep up, that I was too heavy. Says he, "this God damned nigger is too heavy." No. 6 hollows back, "let him down," and I stepped off; says he, "you go home and go to bed, and if you are not there when we come along, we will kill you the next time we call on you; we are going on to kill Williams, and are going to kill all these damned niggers that votes the Radical ticket; run, God damn you, run." I went home and put on my clothes, and goes up to the mill to get the other boys out of the way, for fear they might go on them. The next day learned that Jim Williams was dead.

Cross-examined. When they came to my house they asked me did Williams have the guns; told them I didn't know, heard folks say so, and then they wanted me to go with them.

Mrs. Rosy Williams. Am wife of Jim Williams. Some disguised men came to my house about 2 o'clock in the night and called on my husband. He went under the house before they came, and after they came in he came up in the house and gave them the guns. There were but two in the house, and they asked him for the others, and cursed, and told him to come out. He went with

IX. AMERICAN STATE TRIALS.

them, and after they had took him out doors they came in the house after me, and said there were some guns hid. After they had went out there, I heard my husband make a fuss like he was strangling. I looked out of the crack after them until they got under the shadows of the tree. I couldn't see them then. Next morning I went and looked for him, but I didn't find him. I met an old man who told me they had found him, and said he was dead. Saw him next morning hung on a pine tree with a rope around his neck, dead.

Cross-examined. About six or seven, I reckon, came in the house. Knew that my husband was captain of that company.

December 13.

Hiram Littlejohn. The parties in disguise called Ku Klux came to my house last March, they said: "Have you any guns here?" Said I: "We have got a double-barrel shot gun." "Hand it down here," said they; "we have hung Jim Williams tonight; we intend to rule this country or die." Said he: "You are a Radical man. Next time you go to vote, you vote the Democratic ticket, you hear?" Heard next day Jim Williams had been killed.

John Caldwell. Have resided in York county; was born and raised there; became a member of the Ku Klux organization in 1868. Was initiated by Major J. W. Avery, the Chief. Was in the raid on Jim Williams. Johnson was the chief of the party when we started from the "Briar Patch." Most of them wore black gowns with heads and false faces; some had horns, and some had

not; don't believe I saw a gun in the party; I didn't see any pistols. We met the four Shearer boys, Robert Hayes Mitchell (this man here) and Elias Ramsay. Went to Moore's place; asked him about Jim Williams; how far away he lived; if he knew if Williams had any guns. He said he thought there were twelve or fifteen guns there. Then they went on from there; were gone probably an hour. I was not well, and I just remained with the horses. When they came back, I got up to the foremost man, Dr. Bratton, asked him if he had found the negro; he said "yes." Said I, "Where is he?" Said he: "He is in hell, I expect." I asked him: "You didn't kill him?" He said: "We hung him." I said: "Dr. Bratton, you ought not to have done that." He then pulled out his watch, and said: "We have no time to spare; we have to call on one or two more."

Cross-examined. Have known the prisoner a good while; was in the war with him. When I saw him at the place he had no disguise on. Mostly the men who met us on the Pinckney road were not disguised. The object in going to the house of this colored man was to know if they had any arms; was not told that the object of the society was to prevent negroes from voting. Heard this black man, Jim Williams, intended to Ku Klux the white people of that county. Heard that this man said he intended to kill from the cradle to the grave. There was a good deal of alarm in the neighborhood on account of these fires; heard of a threat to burn down the town of Yorkville. From whom did you under-

stand that threat came? There was a man from Yorkville came into our county; he said there had been a difficulty, on Sunday night, at Yorkville; that the negroes said they intended to burn down Yorkville; that was before we went upon that raid.

Andrew Kirkpatrick. Was initiated into the Ku Klux organization last February by Chambers Brown, Chief at that time. Was at one regular meeting; there were the four Shearer boys and Robert Hayes Mitchell there, Chambers Brown, Hugh Kell, Elias Ramsay, Eli Ross Stewart, Samuel Ferguson, Napoleon Miller, John Miller, Squire Sam Brown, Robert Riggins and Hugh Warlick. Was on the raid on Jim Williams. We met at the Briar Patch by Chambers Brown's order. There were William Johnson, Harvey Gunning, Bascom Kennedy, Holbrook Good, Chambers Brown, Elias Brown, Dixon Bigham, Napoleon Miller, Samuel Ferguson, John Caldwell, Bob Caldwell, Pinckney Caldwell, Jim Neil, Miles Carroll, Ad. Carroll, Dr. Rufus Bratton and Rufus McLain. Some had pistols and some had guns; some wore red and some wore white gowns; capes that came down over their heads; some had horns on them. Two different Klans were represented there, Will Thompson's and Chambers Brown's. We went up to the cross road above Squire Wallace's, crossed the Pinckney road, when we met the four Shearer boys, Hugh Kell and Bob Riggins, Robert Hayes Mitchell and Elias Ramsay; we stopped at Joe Moore's, and called the colored man out and talked to him; then we took him

to the left, to the big road, and to Jim Williams'. We hitched our horses upon the hillside. Myself and Bob Riggins sat down; what they did in the house, I don't know; the others went to the house. When they came back I heard some one say they had hung him.

Elias Ramsay. Live in York county; was born and raised there; joined the Ku Klux in February, 1871; Chambers Brown's Klan; was at the Sharon Meeting House meeting. There were present: Esquire Sam Brown, Chambers Brown, Robert Riggins, Hugh Kell, Pinckney Kell, Sherod Childers, Napoleon Miller, John Miller, Samuel Ramsay, Robert Harkness; there were the four Shearer boys and Robert Hayes Mitchell. Was on the Jim Williams raid; the object of that raid was to seize guns. I went with Hugh Kell, Robert Hayes Mitchell, the four Shearers and Henry Warlick. Some one said in front of me, 4 or 5 horses from me, that they were going to hang Jim Williams; did not know who it was that said that. We went on some distance, through the woods some distance and stopped, and then, all in front of me got down, hitched their horses up, and all the men in front of me went off; I sat down, and John Caldwell came up and sat down, and said he was sick. They were gone twenty or thirty minutes; then they returned; I heard a fuss during the time they were gone, something like a woman in distress. I heard Chambers Brown say, on Thursday afterward, that Williams was a Radical amongst the niggers down there; consumed a

IX. AMERICAN STATE TRIALS.

good deal of time of the men's that belonged to the company.

Sam Ferguson. Am sixteen years old; became a Ku Klux last March, the night of the raid on Jim Williams.

Amsi Rainey. Live on Mr. Gill's place in York county; born and raised there; am about twenty-eight. Have voted there at the last election for A. S. Wallace—the rest of the Republican ticket. About the last of March I looked out of the window, and I see four or five disguised men coming up; I ran up in the loft, and they come to the door, beating and knocking. "God damn you, open the door, and my wife ran to the door, and they knocked the hinges off; they come in, they struck her four or five licks; they asked her who lived here, and she said "Amsi Rainey," and they struck her another lick, and says: "Where is he? God damn him, where is he?" And she says: "I don't know." And one said: "O, I smell him, God damn him; he has gone up in the loft." He says: "We'll kill him, too;" they took me down. This man that struck my wife first says: "God damn her, I will kill her now;" and the one that went after me says: "Don't kill her;" and he commenced beating her then; struck her some four or five more licks, and then run back and struck me and says: "Now, I am going to blow your damn brains out;" and the one by me threw the pistol up, and says: "Don't kill her." He struck me over the back, and sunk me right down. Then my little daughter says: "Don't kill my pappy; he shoved her back, and says: "You go back in the room, you

God damned little bitch; I will blow your brains out!" and fired and shot her. Then they took me off up the road; one said, "No, don't kill him, let's talk a little to him first." Then he asked me which way did I vote. I told him I voted the Radical ticket. "Well," he says, "now you raise your hand and swear that you will never vote another Radical ticket, and I will not let them kill you." And he made me stand and raise my hand before him and my God, that I never would vote another Radical ticket. I did raise my hand and swear. Then he took me out among the rest of them, and wouldn't let them shoot me, and told me to go back home.

Dick Wilson. Live in York County at Dr. Lowry's; voted at the last election, the Republican ticket. The Ku Klux visited me on April 11th, 'twixt two and three o'clock in the morning; two of the men came to the house, and four went to my son's house. These men came to my house; they said, "Open the door, make up a light." I jumped up and the door fell in the middle of the floor. They commenced firing under the door and around the house. "Who lives here?" Says I, "Dick Wilson." "Is this old Dick?" I told them, "Yes, sir." "Where is your son?" "I don't know, sir, where he is." "You are a dam'd liar, sir; walk out here; I have a word with you, sir." "Very well, I will come out." "Come out; come out right now; come out." I walked out. "Go on down here before me, sir, to the other house." They couldn't find my son, and they came out. "Where

is your son?" Says I, "Gentlemen, I don't know." "Your son; don't you call me any gentleman; we are just from hell fire; we haven't been in this country since Manassas; we come to take Scott and his ring; you damned niggers are ruining the country, voting for men who are breaking the treasury. I suppose you are a good old Radical?" Says I, "I don't know whether I have been; I have tried to be." "Yes, and damn you, we'll make a Democrat of you tonight?" Another little one jumped up there, with some horns on his head, and says: "We'll take the damned rascal off and remind him of what we have told him before this; we have told him this long ago, and we want to be obeyed; now we will take satisfaction; walk on here, sir; take the road before me." I walked on. "Drop your breeches, God damn you." I just ran out of them. "Stretch out; we want to make a Democrat out of you tonight." They commenced whipping me; I commenced begging them so powerful. "Don't beg, God damn you; if you beg I'll kill you." One of them said, "Stop this whipping right off. One of you gentlemen take that pistol and go to his head, and

t'other to his feet, and if he hollows or moves I will blow his brains out." They cut me all to pieces; they stopped on me then for a while. "Will you vote the Democratic ticket next time?" "Yes, I will vote any way you want me to vote; I don't care how you want me to vote, master, I will vote." Says he, "there now, put it to him; God damn him he has not told us where his son is; we have got that much, and we will get the balance." After they got done whipping me, they ordered me to get up as quick as I could. "Now let's see how fast you can run." I was badly whipped; my back was all whipped to pieces.

Cross-examined. Knew some of the men though they were disguised. They were Dr. Parker, John James Miller, John Lytle, Bill Lowrey. They had a little cloth over the head that came down and fastened back of the head. They had on common coats. This one had on a calico dress, the other one had on a red dress opened down before; the other had on looked like black overcoats, came way down here [indicating below the knee]. They had a false face, made to cover over the head, eyes and nose. It was cloth.

THE WITNESSES FOR THE DEFENSE.

Julia Rainey. Reside in York County; know Jim Rainey; he was a servant in my family, my former slave; he was captain of a militia company; that company caused a great deal of disturbance and uneasiness generally; they were under his control entirely, and they were not very orderly managed; he had been

absent one year with Sherman's army; their conduct was disturbing, indeed; they had begun to alarm the whole country; my husband treated him very kindly, retaining all the old family; he always felt at liberty to enter my kitchen at any time to see the old family servants; his threats became very dangerous,

indeed, and seemed to be disturbing the neighborhood, generally; his threats were very common to me—through the servants; never heard him myself. There were fires in our neighborhood previous to his death, committed by incendiaries. There was alarm in the neighborhood, fearing an attack by the negroes.

December 14.

John A. Moroso. Live in Charleston. In the fall of 1870 was editor of the Charleston Courier; visited various parts of the country and precincts to report the progress of the canvass; was present at Yorkville three days, there was a great deal of excitement, caused by reports of the negro militia coming into town; I saw five militiamen, armed with Winchester rifles; they were State Constables; they came galloping into town before the meeting was called; they proceeded down the street to a place called the militia headquarters; at this place there was a kettle and a bass drum, and two men were employed to keep these drums going. I heard white people expressing much anger at the attempted interruption.

Cross-examined. When I passed through the county, they were in great alarm about the militia who were armed, and parading about the country at that time; that was the impression on all sides, and they were in a great state of alarm.

Richard B. Carpenter. Was a candidate at the last fall election for Governor of the State. Visited the country about Yorkville and Chester in August or September of 1870. There was

anxiety and alarm on the part of the people in consequence of the armed militia. I do not think the white people were, as a general thing, alarmed; it seemed to have more terror to the colored people than the whites, in that country, because some were armed and some were not. The Conservative colored people were very much alarmed. Those who were armed all belonged to one party. The party supporting the then and present State dynasty is the Radical or Republican party; the party with which I was connected was called the Reform party. It was a party for the reform of the State government; men of all political parties belonged to it; and its object was the reform of the State government. The party in power in the State government was the Radical party.

Bill Lindsay (colored). Had a conversation with Jim Williams about getting ammunition for his company. He told me he was going to get ammunition from York. That he was going to kill from the cradle up. That was Friday before March. Know that such threats were made by Williams to others; heard other people speak of it in this neighborhood; people generally understood that Williams had made that threat. Up to that time there had been no violence or raids of Ku Klux or anybody else; was at home on the night Jim Williams was hung. They asked me if there were any guns there. I said no. Take it down, said they, and hand it to the men outside. The man outside hallooed: It's a double-barrel gun; give it back to him again. A militia party

came there; about fifteen or twenty. The head man hallooed out to come out, quick. They asked me if there had been any Ku Klux there; then they asked which way they went. One of them took my gun away; they sent it back to me the next day. They were part of the colored militia; saw some of them at the election, in squads; they had their side arms on, the whole of them.

Cross-examined. Live at John S. Bratton's. Jim Williams said on Friday before March that he was going to kill "from the cradle up." Because they said he was to give up his arms; he said he did not mean to give them up, except by an order from Governor Scott. When Andy Tims, with his militiamen, came to my house that night, he wanted to go help hunt the Ku Klux; looked like he was more Ku Klux than they were. Told me I had to go or die. I heard afterwards, when I went over to the mill that day, what was done; they had hung Jim Williams. Never knew Jim Williams to do anything bad in that community.

James Long. Reside in York; knowed Jim Williams; heard him talking, sir, at the blacksmith shop of Dr. Love; said he had been down to Columbia a little while before that among the members of the Legislature; he said they wasn't worth one damn, but only for drinking and gambling. He said as for Governor Scott and Neagle, they were both damned old rascals; they had not done what they promised; and he said that he had said to his men the other day, at the old field, at his mus-

ter ground, that he wanted them to come to the field, and the longest pole knocked the per-simmon down, and the strongest man eat them, and kill from the cradle up; that is what he said, and he had as much sense as any damned white man in York District. This was on 4th March, and I think it was about 6th March he was hung. They did not know but what the niggers might come with their arms and kill them; pretty generally among the white people the women were frightened, were worse than the men. I knew of some fires up above us; some gin houses were burned. I heard of Dr. Ellison having houses burned.

Cross-examined. Jim Williams did not tell me that he was going to kill from the cradle up; was telling that to these niggers; I was sitting outside of the house, by the side door. Never heard of his killing any person in my life. The shooting around at nights, suppose it was Jim Williams' company. Think the negroes were generally alarmed about the Ku Klux raiding about them. The biggest part were not alarmed.

John B. Fudge. Lived near Jim Williams; knew him well. Had a talk with him a week before the election last October. He came to my gate and he said he wanted to have a talk with me; and I said to him, if it is on politics, says I, I don't wish to talk; and his reply was, it was. We was of opposite politics, I was for the Democratic party. He says, "Mr. Fudge, I would like very well if you and I could vote together in the next election, which is coming off shortly." I said, "very well, we can."

IX. AMERICAN STATE TRIALS.

He then said, "yes; but" he says, "I reckon you would want me to vote your way." Said I, "you can." I just said to him this. Says I, "you can—we can vote together." He says, "that would be for Judge Carpenter and General Butler;" and he says, "I would see them in hell before I would." "Oh, well," says I, "Jim it don't matter particularly; I reckon you will allow me the same chance." He said "yes." He then said to me, "in case we don't succeed in carrying the next election," he says, "we will kill from the cradle to the grave, and we will apply the torch in every direction; we will lay waste to this country, generally." Says I, "you go on now," and at that he turned his mule, and, as he turned his mule, he said, "I can go to Governor Scott and get as much money as I want, and you can't;" says I, "go on home." Think he was serious; he spoke cool and deliberate.

Cross-examined. Never knew Jim Williams to kill or attempt to kill. His general character in the community was bad. Was alarmed when he said what he said. As to being frightened at one man, I never have been yet; not much. Thought Jim Williams meant what he said. Did not take any steps to have him arrested or bound over.

Re-examined. Jim Williams stood in great respect by the colored people. He had great influence over them.

A. F. Hinson. Knew Jim Williams. He came to my house one morning—about the middle of last February, much out of humor. Says I, "What's the matter this morning?" "Well," he says, "there is some of my

company wanting to give up their guns." I told him I thought that would be a very good thing; and he says "no." Says he, "if I don't get what has been promised me," says he, "I will take from the cradle;" and says, "there has been no burning done to what there will be," and rode right off, and left me. Before that there had been burning, some distance off.

Cross-examined. He didn't give any explanation of what he meant when he said, if he didn't get what he wanted he would do so and so. Don't know anything about his character except that he was a captain of the militia, and was said to be a very bad boy. Never heard of his stealing anything or of his burning anybody's house; heard him make threats. Was frightened by what he said that day somewhat. Never had any fears from the Ku Klux; have heard there was threats made on me by them for keeping spirits in my house for sale.

John J. Lowry. Reside about a mile from the court house. There was a state of alarm from the time Scott armed the blacks, a feeling of insecurity and uneasiness from having arms in the hands of those people—the blacks. The only burning I know of where I live was Mrs. Rainey's gin house; but up the other side, there was plenty of burning, have heard it estimated at twelve or fifteen houses. Met Jim Williams; asked him if it was so that he made those threats. He said that you need not feel any uneasiness; there is not anybody going to hurt you; told him that I was not the one, it was the people down there. He didn't

ROBERT HAYES MITCHELL.

deny the threats, nor didn't say that he made threats.

Cross-examined. The last conversation I had with Jim Williams he told me he would give up the arms. The colored people were very much alarmed over the county on account of the Ku Klux raids. I could not restore confidence to them, no way. Jim Williams sustained a good character where he lived, but he was a man who would carry out threats of burning, and pillage, and slaughter under evil influences; but under other influences he would not. He was a humble nigger; he was ignorant. Felt no apprehension from him personally but if he started his company with those arms in his hands on expeditions that he claimed he had a right to do I would have felt alarmed then.

Re-examined. The first interview I had with Williams I told him that I heard threats that he would take his company and he would kill from the children up, or from the cradle up; and I said to him that could not be so; and he turned off and didn't answer me. A second time I saw him right close home; told him I had heard talk and was still uneasy about him—his threats—and wanted him to give the guns up. Then I told him of the threats I had heard he had made. He said he had said so; and if the white people didn't let him alone he would have his company out here some morning, and when the sun rose there wouldn't be anybody in the country; and he went on to say, that the government—the Yankees, as he called them—had promised him forty acres of land, and they hadn't given it to him; and he

said that if war had to take place that he would have a whole plantation; told him that he had no right to carry on war; he said that captains in General Sherman's army had the right to do it, and he had the same right; he had, as he called it, a paper from Governor Scott that authorized him to carry on war.

David Thomasson. Acquainted with Williams; had a talk at a grog shop. Me and him got to talking with one another about arresting one of the citizens, and he intended to sweep from the "cradle up," because he had the means to do it with.

Cross-examined. Voted the Democratic ticket; was never raided on by the Ku Klux. Didn't feel afraid of them. Did not tell Hector Love that if he would join the Democratic party he would not be troubled.

Minor McConnell. Knew Jim Williams; had a talk with him on the Sunday before he was hung. He told me he was going to Ku Kluxing, and the people and me would see mighty work done then; and he said, too, he arrested Mr. Mendinhall, and he arrested him after dark; and if it had not have been for Crawford that he would have killed him. Had heard threats what he had made, that he would go out and kill from the cradle up.

William Bratton. Knew Jim Williams; was a member of his militia company. In conversations with Williams he made threats that he would rule the country, and, if he could do it in no other way, he intended to Ku Klux the white ladies and children, gin houses and barns. He said if he could not rule it

in that way, that he would kill from the cradle up.

Cross-examined. Have always passed for a colored man. Jim Williams talked about the Ku Klux a good deal; that was the cause of his making the threats. He said the Ku Klux came down into that settlement, and bothered colored people; that he would commence Ku-Kluxing white women and children; gin houses, barns and stables with fire; and if he was in power, and could rule the state in no other way, that he had the means of carrying on war, and if he carried on war he would kill from the cradle up.

Scott Wilson. Live in York county; knew Jim Williams. The last conversation I had with him was at Christmas; he had been down here to see Governor Scott, he told me; hand in his resignation. The only threats I heard him make were against white men; he said he had lived a while among the Yankees, and didn't like them; he preferred living among our own people, and he would be damned if he would vote for any white man; if there was a white man's name on the ticket he would cut it off. Have heard it said by parties that they heard him make threats—about burnings and murder. The people were in a state of panic and alarm; they thought they would have their property insured. At that time there had been no raids of Ku Klux in that part of the country.

Cross-examined. Am not a member of the Ku Klux.

W. H. Atkins. Knew Jim Williams. He said to me one morning, when he came to the mill: "Mr. Atkins, I will tell

you the way to decide between the blacks and the whites is to go into the old field and fight it out; and, by God! if my side gains the day, I am going to take from the cradle up;" then he turned into the mill, and I did not see any more of him.

Cross-examined. This was last February, just before he was killed. Am not a member of the Ku Klux. Do not know the colored people lay out night after night, month after month, for fear of them.

C. J. Frye. Live in York county; belonged to a Council of Safety; others called it the Ku Klux. The object of that organization was self-protection, in case there was any outbreak in the country. The proposition was made to take arms from the negroes—old shot guns—because they might do some damage with them.

Cross-examined. Do not remember that the object was to oppose the principles of the Radical party. I have been a square out Republican all my life.

Andy Tims. There was a meeting called by white and colored people in reference to those guns—to call upon the Democratic party to know whether the guns were a bone of contention in that section. Jim Williams said he was willing to give up the guns if he got an order from Governor Scott; was intimate with Jim Williams; never heard him make any threats. Heard from Edward Crawford that Jim said he would kill from the cradle up. Colored people were laying out then to keep away from the Ku Klux. Know Jim Williams' general reputation for

truth and veracity; he was a quiet, peaceable citizen.

P. J. O'Connell (in rebuttal). Knew Jim Williams, sometimes called Jim Rainey. He was a truthful man; he was one of the quietest and most peaceable men I knew in York county. Never heard him make any threats; heard he had made threats, but it was after he was killed; they were made by persons who were opposed to Williams; was not in York county during the summer, but I left when the Legislature met here. I had received letters that it would not be safe to return. I received a letter from my father that a raid was to be made upon my house; didn't go back, because I thought I was going to be killed if I did by Ku Klux; am a Republican. I can go back there now safely since Major Merrill has got the Ku Klux into order.

Cross-examined. Jim Williams said he was opposed to anything like retaliation; understood there was an organization in York county, that was gotten up for the purpose of committing outrages upon the members of the Republican party, and that these outrages were to be deplored; but certainly he was opposed to anything like retaliation upon those parties. Some members of the Democratic party told me that colored people were combined to burn their houses and gin houses. Did not believe that there was any white men in our county who were scared about the colored militia. Was Colonel of a regiment of militia at one time; but I resigned; Williams' company one of my regiment.

J. H. White (in rebuttal).

Am a member of the House of Representatives. His character as a peaceable, quiet citizen was always good; never heard of his threatening to kill people from the cradle up, but since he was murdered it was generally talked of in the country among the white people. Heard that a great many school houses were burned. It was generally said that the Ku Klux burned them; that was common report. The burning was done after the raiding—the killing of Tom Roundtree, and whipping a number of persons in Clay Hill and along the western portion of the county. The colored people to protect themselves from the Ku Klux raiding generally lay out. They took to the woods of nights. A number of them did lay out all winter.

George Witherspoon (in rebuttal). Live in Yorkville; knew Jim Williams; knew nothing else of him but a peaceable, quiet man; never heard him make any threats against the white people. Dr. Rufus Bratton is a physician in York. Do not know where he is now.

Lewis Howser (in rebuttal). Lived in York county. The Ku Klux ran me off. Knew Jim Williams; was a colored man; he was an upright gentleman, in every respect, so far as I know of him; belonged to his company; never heard him make any threats against the white people. Since he was killed, have heard that he was going to kill from the cradle up never before.

Cross-examined. Was at a meeting called to meet between Yorkville and where I live; two men from Yorkville said wanted Williams to give his arms up.

They was not given up that day, but they gave them up since. Jim Williams couldn't consent to give them up. Williams told them that they hadn't given him any arms, and he didn't know how to give his arms to them.

Allen White (in rebuttal). Live in Yorkville; am a Republican; knew Jim Williams seventeen years; his character was a quiet, peaceable citizen; never heard of any threats that he made against the white people.

THE SPEECHES TO THE JURY.

December 16.

MR. CHAMBERLAIN FOR THE PROSECUTION.

Mr. Chamberlain. Your Honors and Gentlemen of the Jury: You are now approaching the close of a long trial. The issue between the United States and this prisoner is now to be submitted to you upon the law and upon the evidence, as developed in this trial. You cannot, gentlemen of the jury, be unaware that this case, in all its features, is a most remarkable and interesting one. You cannot be unaware that, not only the community in this State is interested in this trial, but that the entire country is watching, with unusual interest and anxiety, for the issue of this inquiry. You know, gentlemen of the jury, that not only your individual-interests, your safety, your protection, your security as citizens, is involved in this trial, but you know, before I remind you, that broader interests than yours, or those of this defendant, are to be determined by your verdict.

I do not feel, gentlemen of the jury, as I have sometimes felt in commencing an argument for the Government, and, in urging upon you a verdict of guilty against this defendant, that I am pressing for the life or the liberty of a man whose interests and whose defense have not been committed to competent and capable hands. I can have no fears, gentlemen of the jury, in this trial, that everything that can make for the defendant, will not only be presented to you, but I know that it will go to you commended with all the learning, and forced upon you with all the eloquence that the bar of the United States can boast. I shall not, therefore, feel that I can pos-

ROBERT HAYES MITCHELL.

sibly exceed the measure of my duty to the Government of the United States, if I present to you, in all their enormity, and all their details, and with whatever of force I can command, all the circumstances and considerations which point to the guilt of this prisoner. And, gentlemen of the jury, not only that, but I am urged to a more than usual effort to discharge my full duty, by the consciousness of what I have already urged upon you, that this trial and its results stretch far beyond this defendant, and far beyond this courtroom, and touch the vital interests of every citizen, and go down to the very foundations of our American liberty and government.

Now, gentlemen of the jury, and if it please your Honors, I believe that there are no contested legal points about which it is proper that I should address myself to the Court, at this time. I am not aware that there is any contest between the counsel for the defense and ourselves, as to the nature and definitions of conspiracy, or what it is necessary for the Government to prove, in order to maintain this indictment; and I shall, therefore, proceed to lay this case before you, as set forth in the indictment and as established by the evidence which has been presented in support of it.

This indictment contains two counts against this defendant. The first charges him with conspiring with others to violate the provisions of the first Section of the Act of 1870, by hindering and preventing divers male citizens of African descent from voting at future elections, and names the election to occur in October, 1872, as the time when this prevention and this intimidation was to take effect.

The second count charges him with conspiring with others to injure, oppress and intimidate Jim Williams, because he had voted at a former election for a member of the Congress of the United States. That is the scope of this indictment.

And now, gentlemen of the jury, let me tell you, before I proceed further, what a conspiracy is. A conspiracy is an agreement or combination between two or more persons, by their concerted action, to do an unlawful act. You mark the

definition, gentlemen of the jury. It is the agreement or combination to do the unlawful act. The unlawful act may never be done. No step may ever be taken to accomplish that unlawful purpose; but the essence of the offense is present, the crime is completed, when the agreement and combination is formed to do the unlawful act. That is all that it would be necessary, in this instance, to prove; simply that Robert Hayes Mitchell, this defendant, did conspire, combine, or agree with other persons, to do an unlawful act by their united action.

Now, gentlemen of the jury, I beg you to carry this definition through this examination and argument, that a conspiracy is not an act—an overt act—but that it is an agreement—an agreeing together with parties united to accomplish, by their unlawful action, an unlawful act or purpose.

And now, gentlemen of the jury, before I go another step, let me call your attention to another important principle, which must be carried in your mind throughout this examination. If there are twelve men, twelve individuals, in the conspiracy, when that conspiracy begins, they are, in the eye of the law, one man; they breathe one breath; they speak one voice; they wield one arm; and, therefore, it is, gentlemen of the jury, that the law says that the acts, the words, the declarations of one of these twelve individuals, while in the pursuit of their unlawful purpose, is the act, the word, the declaration of all. What, therefore, gentlemen of the jury, any one of the conspirators whom we shall connect with this transaction while they were on that raid, as it is called, said, or what one of them did, what any one of them declared to be the purpose of that conspiracy, is the declaration of Robert Hayes Mitchell, and every one who joined with that conspiracy; and it binds him as much as if the words had come from his own lips, or the acts from his own hands.

Now, gentlemen of the jury, in proving a conspiracy, there are two ways. We may prove a conspiracy directly, by bringing before you the written agreement—the conspiracy as recited and written out and agreed upon, in terms and in words;

ROBERT HAYES MITCHELL.

or we may prove the conspiracy indirectly, by proving the acts, and the words, and the declarations of those who were engaged in the conspiracy. We enter, on this occasion, upon both methods of proof. We have to lay before you now the agreement, written and expressed upon paper; and, after that, we have to lay before you the acts, the declarations, the things said and done by those who joined in this conspiracy.

The evidence, gentlemen of the jury, in this case has been long and circumstantial, and I shall do you the honor at the outset, to assume that your recollection of this evidence is as perfect as my own, and I shall not, except when I desire to call especial attention to some parts of this evidence, be in the least obliged to rehearse the testimony again to you. Our first method, therefore, of proving this conspiracy against this defendant is by asking your attention to the written agreement, to the terms and purposes of the conspiracy as they were written down and assented to by the conspirators, and as they were enforced by an oath to be carried into effect by this defendant and his fellow-conspirators.

Now, gentlemen of the jury, I hold in my hand what the Government says is the written agreement, the terms and the purposes of this unlawful combination in which this defendant was engaged. What is this paper? What is the evidence that connects this paper with this defendant? You remember, gentlemen of the jury, the first witness that the Government put upon the stand testified that this paper was found among the private papers of one Samuel G. Brown, a citizen of York County. You remember that Mr. Albertus Hope, the second witness, testified that, in 1868, he expressed to Mr. James Avery—Major Avery—a desire to see the “ground work,” to use his own expression, of this order, about which he had heard; and that Major Avery gave to him a paper, in response to his request, containing the “ground work” of the order, and he delivered that paper to Mr. Samuel G. Brown. He also testified that this paper, which I hold in my hand, and which has been presented to you, appeared, in its general terms, to be that which he received from Major Avery; and,

IX. AMERICAN STATE TRIALS.

further, that the paper itself which he received from Major Avery, and which he delivered to Mr. Brown, consisted of one sheet and a half sheet, as this paper does which I hold in my hand.

Now, then, gentlemen of the jury, who was Samuel G. Brown, in his relation to this conspiracy? We have the testimony of Mr. Gunn that he recognized Mr. Brown as a member of the Klan; that he made the signs of the Klan, and Mr. Brown responded to those signs; and that, in a conversation with Wesley Smith, another member of the order, they discussed the affairs of the order; and it was then, in the presence of Mr. Gunn and Mr. Wesley Smith, that Mr. Brown made the declaration that he was a member of the order, and that his Klan—he claimed to be the Chief—“could kill and whip more niggers than any Klan in York County.”

Is that all of the evidence, gentlemen of the jury, to prove that Mr. Samuel G. Brown was a member of the Klan? No. Elias Ramsay meets him at Sharon Church, at a meeting of the Klan, when a new Chief is elected. Andrew Kirkpatrick, another member of the order, meets Samuel G. Brown at Sharon Church; and both of them have been heard upon the stand to testify to the presence of Samuel G. Brown upon that occasion. Samuel G. Brown, therefore, by his own proven statements, and by the testimony of two of his fellow-members was a member of the order known as the Ku-Klux Klan.

This paper, therefore, gentlemen of the jury, in my hand, is taken from the private papers of a proved conspirator and member of the order. There is, in addition to this, evidence which identifies this paper as the same that was given by Major Avery to Mr. Albertus Hope, and by Mr. Hope to Mr. Samuel G. Brown, a member of the order.

What, then, gentlemen of the jury, is this paper? It purports to be the oath, the constitution and by-laws of the Ku Klux Klan of the State of South Carolina. By the evidence which we have presented, it is shown to come from Major Avery; and who is he? Let us pause a moment to inquire. John Caldwell, who acknowledges himself to be a member of

ROBERT HAYES MITCHELL.

the order, states that Major Avery was the Chief of the Klan for York County. He does not state this upon hearsay or report, but he tells you that he was present at the meeting of the order, at a store in the town of Yorkville, where Major Avery was elected Chief of the County. This paper, therefore, gentlemen of the jury, comes from the Chief of the order of York County. It comes to Mr. Albertus Hope, who acknowledged himself to be a member of the order; it goes from him to Mr. Samuel G. Brown, proved to be a member of the order; and from Samuel G. Brown it comes to you today. What does it purport to be? It declares itself to be the oath, constitution and by-laws of the Ku Klux Klan of South Carolina. This sheet and a half, gentlemen of the jury, is the "ground work" of the order for York County; from Major Avery to Albertus Hope, and from Albertus Hope to Samuel G. Brown, all members of the order, and now it comes to you. Therefore, I say to you, gentlemen of the jury, that you stand face to face with the written agreement, with the detailed conspiracy, with which we propose to connect this defendant.

Now let us examine it, and see if it purports to be the constitution and by-laws of the Ku Klux Klan. Let us see whether it is an innocent agreement, such as good citizens, who look to the peace and welfare of the country, might well be engaged in, or whether it is not, upon its face, an agreement that seems to put to the blush every claim of the age to advancing civilization. Let us see whether it is not an agreement that ought to make us fear whether we have advanced yet beyond the age when might was right, and nothing but power prevented the destruction of every liberty.

What is this paper? and what are its purposes? and how is this Ku Klux Klan to move on in its operations? Why, gentlemen of the jury, the first provision of the constitution, to which I desire to call your attention, is, that Article 5, Section 1, requires that every member of this order should provide himself with a pistol, a Ku Klux gown and a signal instrument. Note that, gentlemen of the jury. This conspiracy, or this agreement, is to be carried out, in the first place,

by arming every member with a pistol, and by disguising him in a Ku Klux gown, and providing him with a signal instrument. Armed, disguised, and with a signal instrument, which shall make it unnecessary to use the human voice—such are the first features of this agreement?

Now, what is the next significant feature of the agreement? That any person who shall divulge, or cause to be divulged, any of the doings or purposes of this organization, shall suffer death. Is that an innocent agreement, gentlemen? Every member armed with a pistol, disguised in a gown, with his signal instrument, and if he makes known any of the affairs of this order, he shall die! Does that look like innocence? I read further: "We oppose and reject"—What? False principles and bad government? Unconstitutional laws? Assaults upon our citizens? "We oppose and reject the principles." What? Bad political principles? There may be, and perhaps are, bad men in all parties, but this declaration says: "We oppose and reject the principles of the Radical party," and we arm ourselves with a pistol, we disguise ourselves with a gown, we carry our signal instrument, and we punish any man who discloses any of our affairs with death! and all in order to oppose and reject the principles of the Radical party.

What, gentlemen of the jury, have we come upon now in this agreement? It is an agreement to oppose a political party without discrimination. It is not individuals of the party to whom we are to be opposed, but we are to "oppose and reject the principles of the Radical party." We are to do it with "pistols, and in disguise," and with our "signal instruments," and any man who tells of it shall die! Now, then, look at this agreement. We have discovered that there is an organization, armed and disguised; we have a penalty of death for a divulging member, and all, according to its own declaration, in order that we may oppose and reject the principles of a political party in the State.

What next? "No person of color shall be a member of this order." The lines are now narrowed, and this order is seen,

not only to be a political organization, but it is found now to be aimed against those citizens of a particular color. "No person of color shall ever be admitted a member of this order." Why not? Can we not suppose that persons of color may be on the side of "justice, humanity, and constitutional law, as bequeathed to us by our forefathers," in the language of this oath? Yet no person of color, whatever his principles, whatever his life, shall ever be a member of this order. Here you reach the touch-stone of this conspiracy, and you find it an armed, secret, disguised confederacy, punishing its members with death for divulging its secrets, and aimed against the Radical party, and excluding every person of color from its membership.

What next, gentlemen? "We are on the side of constitutional liberty, as bequeathed to us in its purity by our forefathers." What does this mean? I can put an interpretation upon such language which will give it an innocent meaning. If found in connection with an instrument, which bears upon its face, in every other respect, the seal and evidence of an innocent and laudable purpose, you might conclude that "constitutional liberty, as bequeathed to us in its purity by our forefathers," was an innocent phrase, expressive of reverence for the principles which animated and guided the fathers of the Republic. What, gentlemen of the jury, does it mean here in this charter of the Ku Klux Klan of South Carolina? What does it mean here, interpreted in connection with the pistol, Ku Klux gown and signal instrument? Nay, gentlemen of the jury, what does it mean, interpreted in connection with this phrase, "No person of color shall ever be a member of this order?" Gentlemen, the answer must come to every mind, and from every lip, that it means constitutional liberty, the liberty conferred by the Constitution of the United States, before those great amendments had been incorporated into that Constitution—those great amendments which destroy slavery, and elevate the colored race to the rank and to the rights of American citizens. It means, "We are in favor of the Constitution as it stood, and as it was in-

interpreted when slavery was the condition of two-thirds of the present population of South Carolina; when, in place of sitting upon juries, and electing the officers of the State, you, the members of the colored race, stood at the whipping post, or crouched at the auction block." It means that the purpose of this Ku Klux Klan, whose charter contains those ominous words, is, by the express terms of their agreement, the restoration of the colored race to the condition, civil, political and personal, in which they stood when our fathers framed the Constitution.

Gentlemen of the jury, as I have already said, these apparently innocent words, interpreted in the light of the pistol, the Ku Klux gown, the signal instrument, the penalty of death, the exclusion of every colored man from membership, become the plain and appalling evidence of a purpose no less vast and desperate than the destruction, the utter overthrow, nay, the turning back of the entire tide of our history since the opening of the last great struggle on this continent between the spirit of slavery and spirit of justice and liberty. Not only, therefore, gentlemen, does this instrument, which we are now examining, furnish a machinery for crimes; not only does it exclude an entire race, who form a majority of our fellow-citizens, but it declares, in the clause which we are now immediately considering, it declares its broad and general purpose to be, to destroy the civil and political and personal rights of our entire colored race.

That, gentlemen of the jury, is what these conspirators have written; but I need not tell you that no conspirators ever committed to paper the entire scope of their agreement. They don't trust it to any paper to disclose to the world the extent of the purpose for which they combine; and, therefore, you don't expect that even this agreement, as it has now been presented to you, will disclose the entire purpose and plan and mode of operation of this Klan. But this clearly appears, and you will not forget it, that under the written terms of this agreement, it is a secret, disguised, armed conspiracy, directed against a political party, and ultimately against the

colored portion of our fellow-citizens. That, gentlemen of the jury, is what we find to be the nature of this conspiracy, simply from an examination of its written agreement.

I now come to another kind of evidence which will determine for you what was the purpose of this organization. It is the declaration and testimony of its own members. You have seen what there is in this paper; what they say they meant, in explicit terms. Now, let us see how this was interpreted by those who have acknowledged that they took this oath, and subscribed to this constitution, and who have become full members of this order.

You recollect the testimony of Mr. Osmond Gunthorpe; that he joined this order of the Ku Klux in 1868; that he thought, and was told, that it was an organization simply for self-protection, and that he joined it with that intent; not that he himself apprehended any danger, but seeing that all his neighbors joined this mutual protection society, he, therefore, joined it himself. And what does he tell you he found, when he got beneath its written oath and constitution, was its purpose? He tells us that it was a political organization; that its purpose was to control the elections, and while they had not yet risen to the height of killing negro voters, they even then proposed, in 1868, to go to the election at Rock Hill, and without the use of any great violence, still to control the election by crowding away the Radical voters from the polls. You remember, gentlemen of the jury, that this was in 1868, and that Osmond Gunthorpe was then a member of the Ku Klux Klan, and that that was its purpose, as he discovered for himself after he had taken its oath and found out its principles and purposes. Now let us turn to the testimony upon this point. I will read a portion of the testimony of Mr. Gunthorpe.

I joined the Ku Klux Klan in 1868, was in August initiated by Dr. Edward T. Avery; the substance of the oath I took was that we was opposed to the Radical party; and were to protect fellow members' widows and their households, female friends; and, I believe, that was about all. The penalty for divulging the secrets of the organization was death; think it was the intention of the organ-

ization to control elections; understood the day of election, in 1868, they were not to use any force, but by crowding the box they were to keep all from voting they could, all of the Radical party. I left the order because it was not what I thought it to be. I found, when I went in, it was a political organization. Before I got into it I thought it an organization for the protection of each other, but not to interfere with any other party. I found it to be a political organization, to try to control the elections for the Democratic party, at that time.

That is his testimony of the purposes of this order in its young days, and, probably, before it had enveloped in its meshes the greater part of that community; but as far back as 1868, Osmond Gunthorpe, a member of that order, discovered that its principles were political, and that it intended to control the election in the interest of the Democratic party.

I come now to the testimony of Kirkland L. Gunn, also a member of the order, who was in communication and conversation with members of the order; a man of intelligence, and a citizen of York County; well informed, and acquainted with the persons and purposes of the order; and what does he tell you? He tells us, in precise terms, that its purpose was political; that it was aimed against the Radical party; and especially against the colored members of the Radical party; and that its mode of operation was the killing and whipping of prominent Radicals, and the terrorizing and intimidation of the negroes generally throughout the country. And let me here call your attention, gentlemen of the jury, to the fact that this testimony stands totally uncontradicted. Our witnesses tell you that the purpose of the Klan was directly political, and aimed directly against the colored people, and that they carried out this purpose by whipping and killing. Now, if that was not the purpose of the order, where are its members, that they do not come forward today and rescue this imperilled brother? If it is a charitable association for mutual self-protection, where are its members, that they do not own their membership and keep their oaths to rescue a distressed brother? Is not this a brother Ku Klux in distress? What hinders them from coming forward today and saying: "We are members of the order, and we will prove

to you that our purposes were innocent; that we did not aim against a political party, but simply to protect our lives, our children, and our friends, from negro outrages?" I will tell you why, gentlemen of the jury: It is because every one of them knows that if he puts himself upon that stand and confesses that he belonged to the order described in this paper, he is a felon, and goes to the penitentiary. That is what keeps his brother Ku Klux from coming to rescue this imperilled brother; that is what keeps them out of this court and from contradicting Mr. Gunthorpe's and Mr. Gunn's testimony. An innocent order, indeed! Our eminent friends tell us it is a charitable association; and yet, when one of those members, who is simply in the execution of the purposes of this charitable order, is put upon his trial, they are as silent as the grave. Not one of them today dares to acknowledge himself a member to save Robert Hayes Mitchell, his brother, who belonged to that organization. Where are they? And echo answers, where? The officers of this Court cannot find them, and those who sit here today, sit with sealed lips.

Well, gentlemen of the jury, what does Mr. Kirkland L. Gunn tell you? He says that the order was political; that it was aimed against negroes, and that its purpose was the killing and whipping and intimidating of the negroes of that County generally, in order to control the elections.

For one moment, gentlemen, let me call your attention to some of the testimony of Kirkland L. Gunn:

The obligation that I took was that I should not divulge any part of the secrets of the Klan that I had joined, and it was for the purpose of putting down Radical rule and negro suffrage. Heard the constitution and by-laws of the order read when I was initiated. I was knelt down and the oath was read to me and the constitution and by laws were read to me. Those purposes were to be carried into effect by killing off the white Radicals, and by whipping and intimidating the negroes, so as to keep them from voting for any men who held Radical offices. Their principle was to whip such men as they called Radicals, and men who were ruining the negro population, &c., and they murdered some. The organization was armed according to the by-laws; most generally pistols; sometimes shot guns, muskets, &c. The Ku Klux gown is a large gown made of

some solid colored goods; don't know what the color was; it looked dark in the night. Those gowns were worn to disguise the person. When the Klan was assembled to prosecute any of its purposes, such as whipping and killing, they were always disguised in the night.

He then testifies that he himself was ordered upon two raids. I now pause, for a moment, to consider the value of Mr. Gunn's testimony. It was developed, on the cross-examination, that Mr. Gunn had been to Georgia, and had visited the Attorney General of the United States, and that he afterwards saw him and made the disclosures to him of his connection with the order, and of its purposes and methods. That he afterwards went to Washington, and, in an interview with the Attorney General of the United States, he received \$200. Now, gentlemen of the jury, I understand that if a party giving testimony, or divulging secrets is promised any reward, or any inducement is held out to him to make his confession or give his evidence, it tends to destroy and diminish the credibility of the witness. If it can be shown that, before he gave that testimony and made these disclosures, before he stated to the Attorney General of the United States that he was a member of the order, and what its purposes were, he had been promised or received a reward; but as to any evidence that Mr. Gunn, previous to his disclosures to the Attorney General of the United States being promised, or that he received, any bribe or offer of reward, there is none. He went and made his disclosures, and there is not a tittle of evidence in the case that his disclosures were prompted by any offer or expectation of reward.

Now, gentlemen of the jury, it was not improper for Mr. Gunn, who was a man of business, whose time had been occupied, and who had been diverted from following his occupation by disclosing this conspiracy, which, up to that time, had maintained its secrecy, to receive that sum of money; nor was there anything objectionable on the part of the Attorney General of the United States in giving Mr. Gunn that money, under these circumstances. I say there was not, gentlemen of the jury; and his testimony goes to you, today,

free from any evidence that, before he had made these disclosures, he had been enticed, in any way except by his own conscience and will, to make those disclosures.

But, gentlemen of the jury, the testimony of Kirkland L. Gunn may be left out of this case, and still the character of the agreement stands confirmed by the testimony of other witnesses, against whom even this suspicion, which is without legal foundation, cannot be raised. We have confirmed what I have argued to you to be the purpose and method of the Klan, by the testimony of Mr. Gunn, and I come now, gentlemen of the jury, to the testimony of Charles W. Foster, another witness, who confesses to you that he was a member of the order; that he was, for a long time, a member; and, unlike Mr. Gunn, that he did go upon raids; unlike Mr. Gunn, that he received his interpretation from the acts of the order, and not from their declaration or from their written constitution and by-laws. Charles W. Foster was not only a Ku Klux, but he was an active Ku Klux. He went upon raids and executed the purposes of the Klan in overt acts.

Let us look at his testimony:

Remember the oath I took; the first was to protect women and children, I believe; put down Radicalism, put down Union Leagues, &c. The penalty was, if a man divulged any secret of the society, he was to suffer death! death!! death!!! (Counsel here read the oath as read to Gunn.) That is about the same that we had. The general purpose of the order was carried out by whipping those men who belonged to the Union League—both white and black.

And then he describes, as you, gentlemen of the jury, will remember, the various raids upon which he went; and, among others, he details the circumstances of the raid upon a man by the name of John Thomasson, who was accused of being a Radical in the neighborhood; he had taught a nigger school, and voted the Radical ticket. They called him out, and told him to let Radicalism alone.

Gentlemen of the jury, you remember the testimony of Foster in its details, and I need not occupy your time in go-

ing over it again; and now where do we arrive? We have examined the written agreement and constitution, and have found that it provided for a secret organization, and that the penalty for divulging its secrets was death; that it was armed; that it was disguised; that it was aimed against the Radical party, and more particularly against the negroes of the Radical party. That is the written agreement. Now, what have we seen from the statements of these members of the order as to its purposes as developed by its acts? Why that, in 1868, in its incipency, it aimed to control the election for the Democratic party, and that, in 1870 and 1871, by the testimony of Mr. Gunn and of Mr. Foster, and the testimony of other witnesses, which you will remember, its purpose was still to control the elections; to intimidate the negroes and prevent them from a free exercise of their judgment in the matter of suffrage.

Those are the two kinds of proof, gentlemen of the jury, that refer to this general conspiracy: the direct proof of the written agreement, and the indirect, but still more conclusive, evidence of the acts and purposes of the order, as stated to you by those who had taken the oath, who had gone upon raids, who had conversed with members of the Klan, and who knew it thoroughly in its purposes and operations. Now, what have we shown? We have, gentlemen of the jury, first, the Ku Klux Klan—an armed, secret, political organization—sworn by an oath, under the penalty of death, to keep its secrets from the world; carrying out its purpose, throughout the County of York, by the killing, whipping and intimidation of the Radical party, and, more particularly, of the negroes belonging to that party.

Gentlemen, against this evidence, what have we? If it be—as the impression has been sought to be made—if it be anything less than what I have described it to be, why has it not been explained today in behalf of this poor prisoner? That is what the Government says your Ku Klux Klan means. Why is it not denied? Where is James William Avery, Chief of your County? Surely he could come here and tell you

that, in 1868, he organized a society for the mutual protection of himself and his neighbors. He could show you that its purpose was within the law; and that all the acts for which he is responsible, or which he committed, were strictly within the law, and not an unlawful conspiracy. Where are the Chiefs of the Klan who enticed this poor prisoner? Is yonder door barred to their entrance? Why are they taking their case in foreign lands, where they cannot be reached? Here is a distressed brother member, charged with being a member of a conspiracy to deprive divers male citizens, of African descent, of their right to vote, and the evidence against him is that he belonged to this illegal organization. Can it not be explained?

Gentlemen of the jury, not a member of the order stands here to contradict what we have proved to be the purpose of that order. Why, gentlemen, if this prisoner is to be defended, how much easier to have put his defense upon the testimony of his fellow-members. What is the evidence they must submit if he is to be saved? How much easier it would have been to do this, than to bring our distinguished friends here from a distance to aid him! With what? not their testimony, which would acquit him, but simply their learning and their eloquence, to persuade you that this testimony is not sufficient to convict. They are under no obligations. They have taken no oath to protect and defend fellow Ku Klux; they are not knights errant; and they do not come here today for love, but they come here in the exercise of their profession; while all those who swore with Robert Hayes Mitchell that they would stand by and protect their fellow-members are nowhere to be found on this day of a brother's trial.

Now, gentlemen of the jury, this conspiracy, for which we are prosecuting this defendant, is the general conspiracy, which we have proved is embraced by the agreement and statement of members of this order.

I now come to the second division of this argument, which is the specific occasion on which this general conspiracy, embracing among its members this defendant, went upon the

practical execution of their agreement. We come now to the 6th day of March, 1871. We are to see whether Robert H. Mitchell, this prisoner, with the others named in this indictment, did, on that specific occasion, undertake to carry out this general purpose which we have described in the agreement, and by the statements of acknowledged members.

You remember, gentlemen of the jury, the story of the Jim Williams raid; that it was on the night of the 6th of March, 1871. You remember the testimony of Elias Ramsay, of John Caldwell, of Andrew Kirkpatrick, of Samuel Ferguson—all of them members of the Klan, and all of them present on that occasion. You remember the meeting at the Briar Patch, and the conspirators there assembled, going to the cross-roads, near Squire Wallace's, where they met the four Shearer boys, and where this prisoner, Robert Hayes Mitchell, first appears. You remember that the four Shearer boys were sworn into the order at the cross-roads, near Squire Wallace's, and that then they took up their march. Here, gentlemen of the jury, we have the conspiracy literally and visibly in motion. This general conspiracy of the Ku Klux Klan takes up its line of march for the accomplishment of its purposes.

And now comes the evidence which points to this defendant as guilty upon this indictment. Now mark, near Squire Wallace's, their ranks are recruited by this defendant, and they take up their line of march, disguised, marching two by two, under the lead of Dr. James Rufus Bratton, upon an innocent undertaking, upon a charitable errand! No harm intended to any one, but simply protection against those horrible outrages of the negro militia! And here is James Rufus Bratton, the leader of that moving conspiracy. They come to McConnellsville; they arrive at the plantation of James Moore; they knocked at the door of Gadsden Steele, a colored man; and now remember, gentlemen of the jury, that every act and every word of any one member of that marching conspiracy, is the act and word of every other member of that marching conspiracy. If the humblest man who rode in that

party did an act, or uttered a word, it is the act and the word of every other man who formed a part of that conspiracy.

They come to the door of Gadsden Steele, on the plantation of James Moore; they bring him forth and question him about his gun, and not being satisfied with his answer, they take him to Mr. Moore himself, and calling him out, they ask him about the guns. He says that Gadsden has no guns.

"Well, what ticket did he vote?" Nothing political! Self-protection! Charity! Mr. Moore says I will not tell a lie for he—"he voted the Radical ticket." And the voice now comes forth from that group of conspirators, "There, God damn you, we'll kill you for that." Not political! Only a search for guns! All because of the panic among the white people! Yet Gadsden Steele's offense, for which he is promised death, is that, by the statement of Mr. Moore, he voted the Radical ticket! Who uttered those words? No matter who uttered them; some one of those disguised men, there in front of Mr. James Moore's house, uttered them, and the voice was the voice of the conspiracy; every man uttered those words; they had but one breath—one utterance. "We will kill you, because you voted the Radical ticket."

What now? Gadsden Steel is told to mount a mule and go with them, and conduct them to Jim Williams' house. He mounts the mule and goes a short distance. He is then put down, and two men, who are riding with them—disguised Ku Klux, on this Jim Williams raid—then turn to him, and point their guns at him, and then, gentlemen of the jury, they declare the whole purpose of that night's raid. They say to him, "We are going to kill Jim Williams, and we are going to kill all you damned niggers who voted the Radical ticket." Whose voice was that? No matter whose voice it was; it was the voice of the conspiracy; and yet we are told this was not a conspiracy to interfere with anybody's voting! But they say, "We are going to kill Jim Williams, and we are going to kill all you niggers that vote the Radical ticket." That is the voice of the conspiracy—not of Rufus Bratton only, but of Robert Hayes Mitchell. That is in evidence before you to-

day as the purpose of every man who rode on that marching conspiracy.

Well, gentlemen of the jury, follow them. They pass on; they turn aside from the public highway, and cross the field; they halt in a piney thicket and dismount; a detail is ordered to go forward; the detail is made up, and they put on a disguise, according to the testimony. From half an hour to an hour, while they are absent, nobody hears anything from them, except Elias Ramsay, who heard what the thought were the cries of a woman in distress. They return, and the order is given, "Mount, mount, and let us be off."

After they have moved away, some of these conspirators learn, for the first time, that Jim Williams has been killed. John Caldwell rides to the head of the column, and asks Dr. Rufus Bratton what they had done with the nigger, or where the nigger was. His reply is, "He is in hell, I expect." He draws out his watch, and looks at it by the light of the moon, and says, with a coolness that I think was never excelled, "Let us make haste; we have got two or three more to visit yet tonight." He has only hung one negro, and he is going to visit two or three more.

You see here, gentlemen of the jury, as you will, perhaps, never see again, the terrible power of organization. Probably no one, no two, no three of that party could have been induced to commit that murder; but, under the cloak and sanction of this vast organization, the responsibility of crime was divided until it was not felt. Murder, violent murder, excited no compunction, because behind Rufus Bratton was a column of seventy men, who were to divide the responsibility with him. This is the terror, gentlemen, of conspiracy. That is why these terrible combinations are made possible, because no man in that seventy felt that he, himself, had murdered Jim Williams. But the deed is done, the secret is safe, and every man says, "We are all sworn to secrecy." "Williams is dead, and the world will never know who hung him." Ah! gentlemen of the jury, as a more eloquent voice than mine has said, "That was a dreadful mistake. Such a

secret can be safe nowhere. The world has no nook or corner where the guilty can bestow it, and say it is safe." And here, today, after months of delay, you stand face to face with one of the men who joined in that conspiracy to kill Jim Williams.

Then, gentlemen of the jury, follow them as they leave that piney thicket and march again upon the highway. We know not where else they went, but we do know that, on their return, they visited the house of another colored man, whose name is Hiram Littlejohn, and who has testified before you. Gadsden Steele tells you what they were going to do as they marched down to Jim Williams'. Hiram Littlejohn tells you their purpose as they returned. They called him forth, and took from him his gun, and then told him: "We have killed Jim Williams; and we intend to rule this country or die. When you vote next time, vote the Democratic ticket." Whose voice was that? It was the voice of the conspiracy, and of every man who rode with it. What does it say? "We have killed Jim Williams; and we intend to rule this country or die. The next time you vote, vote the Democratic ticket."

Now, gentlemen of the jury, "order reigns in Warsaw," and York County is safe! All other sections of the country had already been subdued, and only in this one belt of country, where lived this terrible Captain of the negro militia, only there was Radicalism unsubdued. But now the head and front is gone, and safety is restored to the white people of York County! Why, gentlemen of the jury, panic among the white people!—fear of the negro militia!—why didn't they tell Gadsden Steele—why did they not tell Hiram Littlejohn—that he was never again to join the negro militia? that he must quit Jim Williams' company? They said nothing of the kind, but passed on, with their guilty secrets.

Now, gentlemen of the jury, what evidence can be more complete? Here is the written agreement; here are declarations of members of the order; and here is the specific occasion on which these Klans assembled; and here are their pur-

poses disclosed on the night of this raid by its own members, while going and while returning.

Now, gentlemen, this defendant was there; he was a member of the Ku Klux Klan; he had taken its oath; he joined in this raid; and the acts and declarations of his co-conspirators are his acts and declarations. It has been established that Robert Hayes Mitchell was a member of the party; that he went upon this Jim Williams raid. And there, gentlemen of the jury, is the end of our testimony with reference to the first count of this indictment, which charges that Robert Hayes Mitchell, with others, conspired to hinder and prevent divers male citizens, of African descent, from the enjoyment of their right to vote at future elections. Gadsden Steele and Hiram Littlejohn so testify. We say nothing about others whom they visited; we say nothing yet about their purpose in the actual killing of Jim Williams. But here is a conspiracy which, by its written agreement, and the understanding of its members, is aimed against negro Radicals; and here it is in motion, going against Gadsden Steele and against Hiram Littlejohn, for the express and avowed purpose of affecting their votes; of preventing them from voting or from exercising their free choice at future elections.

We come now, gentlemen of the jury, to the second count of this indictment, which charges, in substance, that this defendant, with others, conspired to injure and oppress Jim Williams, because he had voted at previous elections, and, in particular, because he had voted for A. S. Wallace as a member of the Congress of the United States. It is, gentlemen of the jury, upon this count of the indictment, and with reference to the intent of these conspirators, as they went to the house of Jim Williams, that the chief controversy depends. Did they go there to injure and oppress Jim Williams because he voted the Radical ticket? or did they go there to put him out of the way because they were in terror from his threats, and from his position as a captain of a negro militia company?

In the first place, it is no longer to be disputed that this was a Ku Klux raid. All the men who went there on that night

were, beyond controversy, members of the Ku Klux order. They were there, therefore, we must conclude, upon some purpose which required or justified the presence and the action of that order. As we have seen from the constitution and by-laws of the Klan, but more particularly from the statements of its members, the purpose of the order was to control or affect the elections, and not to prevent the negro militia from remaining in the country, or to disarm individual negroes, except so far as their being armed may have been supposed, in the minds of these conspirators, to have contributed to their strength and determination as Radicals.

So much, gentlemen of the jury, is not doubtful, namely: That this was a Ku Klux raid, and that the leading and prevailing and constant purpose of this order was to intimidate the negro voter, and, if we were to admit, gentlemen, at once, that they did go there, on this occasion, to disarm this captain of a negro militia company, and to take his life, it would still be for these conspirators to show that it was not for the sole purpose of terrorizing that community on account of negro Radicalism. That has been shown, abundantly, to have been the main motive and continual object of the order; and if, on this occasion, their purpose was no more than simply to disarm the negro militia and kill this captain of a militia company, because he was a captain, then you will require conclusive evidence that, on this occasion, they were not still attracted and moved by their constant and controlling purpose, through the intimidation of this negro militia company, the disarming of these negro Radicals and the killing of their captain, to put down Radicalism itself. The constitution of the order tells you that that was its purpose, and the members of the order tell you that that was its purpose, and what evidence, gentlemen of the jury, have you that, on this occasion, while the specific act that they did was the killing of the captain of this militia company, and the taking away of guns from the members of that company, it was not still in pursuit of that same purpose for which Gunthorpe and Gunn and Foster told you the organization originated and existed in York County?

Let us look, gentlemen of the jury, for a moment, at the operations of this Klan. We hear but little of it, except here and there, until after the election of 1870. It is in evidence, however, that the organization existed as early as 1868, and even prior to the fall election of that year, but it slumbered, so far as we know, for the most part, and did not manifest itself in overt acts. But, you know, gentlemen, that after the election of 1870, the Klan immediately commenced its active operations in that County. They went forth then, having completely failed in that election, even under the persuasion of the candidates of the Reform party, to alienate the colored people from their allegiance to the Republican party, they then entered, I say, upon their active crusade, through this organization, for putting down Radicalism. It is in evidence that all over that County—north, south, east and west—radiating constantly from the town of Yorkville, where sat James William Avery, the chief of the County—prior to the Jim Williams raid, negroes had been whipped and had been killed; that a state of terror had arisen which drove from their homes at night the greater part of the negro population of that County. Even Mr. Lowry, a witness for the defense, tells you that, upon his plantation, lying almost within the charmed circle of Jim Williams' militia company, the panic was so great among his own negroes, that he could not restore confidence, and they fled their houses at night for weeks, for fear of the Ku Klux. All over that County, therefore, gentlemen, Radicalism was subdued, except in this belt of country, extending from Yorkville to Jim Williams' residence.

And how, gentlemen of the jury, shall Radicalism be subdued there? The Ku Klux Klan answered this question thus: "By disarming the negro militia; by taking out of their hands the only protection that the Government had given them." And, first, by threats, and then by persuasion, and then, by renewed threats, they ordered and besought this Captain Williams to deliver up his arms and trust him-

self to the tender mercies of this organization, which had already murdered Roundtree and Goode and Leach, and had terrorized the entire community, except in that narrow belt where lived Jim Williams and the members of his militia company. But the brave man refused! I honor him for it. There is not a drop of blood in my veins that does not stir today in grateful response to this heroism of an uneducated negro—five years, only, a freeman—who now determined to protect the lives and liberties of his fellow-citizens by the only means which the Government had given him. Would to God that others had then been inspired with the determination of this militia captain who refused, gallant man that he was! amidst the prevailing cowardice, to surrender either his principles or his arms! And when the names of these conspirators, who murdered him, shall have rotted from the memory of men, some generation will seek for marble white enough to bear the name of that brave negro captain.

Radicalism broken, subdued! Only the narrow bridge left of Jim Williams' militia arms! And he won't give them up! And Radicalism will prevail and remain unsubdued there until those arms are seized and that brave negro killed! And who goes there to do it! Is it the citizens generally who seek protection from the danger with which he threatened them? Did some of my friends, who sit here, citizens of York County, join in this expedition? Did they go? No; the Ku Klux Klan goes! It is not the spontaneous uprising of the people who have heard Jim Williams' terrible threats, but it is the stealthy midnight march of the disciplined, disguised and sworn Ku Klux Klan. If it was merely to seize the militia arms, to disarm negro outlaws, was not that a mission in which every citizen might, in such an emergency, have joined? Yet, gentlemen, not a man went upon that raid to seize those arms and hang Jim Williams except the sworn members of this political, disguised and sworn Ku Klux Klan. Gentlemen of the jury, you know what they went for. You know why those arms

were a terror. You know why Jim Williams was the object of that raid. It was because the mission of the Ku Klux Klan had not yet been accomplished, and Radicalism could still flourish and be protected under the gleam of Jim Williams' bayonets.

But, gentlemen of the jury, Jim Williams had made threats! He was a dangerous man! This is what our friends says for the defense. About the question of Jim Williams' character, gentlemen of the jury, I have little to say. We have had straggling evidence, weak, halting, wholly unsatisfactory, that he was a dangerous man; but, up to the time of his death, not a single act, not the smallest scrap of testimony, gentlemen of the jury, of any uncivil or disorderly act has been placed before you here, either on the part of Jim Williams himself, or on the part of any member of that militia company. Now, if Jim Williams was a dangerous man, and had excited a panic among the white people of that community, could they not have shown us, by some of his acts by what he himself had done, or allowed his militia company to do, that he had demonstrated himself to be the dangerous man that that community reported him to be? Would not our most able and ingenious friends who conduct this defense have put such testimony before you if it had been possible to have produced such testimony? And yet, up to the hour of his death, I repeat, no disorder, no misconduct on the part of the captain of his company had been brought to your notice. On the contrary, gentlemen, at the very time when these Ku Klux raids were going on all over that County, a meeting of the white and colored citizens of that very neighborhood was held. Andy Tims, a member of Jim Williams' militia company, the clerk of the company, calls a meeting, at the suggestion of the white people, to know whether these militia arms are the cause of the Ku Kluxism, and of all the terror that pervaded the country; and this meeting of white and colored citizens expressly agreed with him that it was not the militia arms.

But, Jim Williams' threats! Williams' threats "to kill from the cradle up!" Well, gentlemen of the jury, that is a matter for you. If you believe that Jim Williams made those threats, and that the making of those threats was the reason, the motive, which induced the Ku Klux to plan and to execute that raid which resulted in his hanging, then you have given to this defense some little color for the position which they take, that the intent of the raid was not to injure him on account of his political principle or action.

Gentlemen of the jury, do you believe he ever made those threats? Do you believe that except, possibly, in view of the raiding of the Klan through the country, and the fact that his own company, himself and his neighbors, were hunted like wild beasts from their homes, do you believe that, except in connection with such events, he ever uttered any threats against the white people of that County? I can believe, gentlemen of the jury—and I do not blame him for it—I can believe that he said, and that he meant, that, if they did not stop murdering his people, retaliation would commence. But, gentlemen of the jury, who are these witnesses who tell you of these threats? They are exclusively the white people of York County and three Democratic negroes! No negro, who was not a member of the Democratic party—who was not anti-Radical—ever heard Jim Williams make these threats, or ever heard of such threats till after he was killed. There is the evidence, gentlemen, and I leave it with you. I do not believe—and I think you do not believe—that those threats were made, except, possibly, and with the qualification which I have taken, in view of the murders and the outrages done upon the colored people of York County; and if they were so made, they were justifiable. But, whatever he had done, whatever his language and whatever his position in that community, these conspirators, who went to murder him, told Gadsden Steele, on the way there, that their purpose was to "kill those who voted the Radical ticket," and on their return they told Hiram Littlejohn the same; and, as

IX. AMERICAN STATE TRIALS.

I have already shown to you, the fact that the Ku Klux Klan was alone selected to do this work, points with irresistible certainty to the objects which they had in view in the taking off of Jim Williams. They had joined in the general crusade against Radicalism, and everywhere else the militia arms had been given up, and the negroes had been subdued. But Jim Williams still slept in his house, and his company still had their muskets, and he had told them that if these raids did not cease—perhaps he told them, I had almost said I hoped he did—that if these raidings did not cease, somebody besides negro Radicals should suffer. The Ku Klux Klan had sworn to put down the Radical party. Armed and disguised, this organization went there on that night to capture and destroy this last stronghold of Radicalism in York County. That, gentlemen of the jury, was the head and front of Jim Williams' offending.

Panic among the white people! And what did they do? Were they so panic-stricken that they slept out of their houses? Negroes were scattered in the woods for three months, and yet there was such a terrible panic among the white people! There had been burning of gin houses, yet, in not a single instance can this be shown to have taken place till the Ku Klux raids had become frequent and general. If they raided upon Jim Williams because of the burnings and the panic, what was the object of their raids in December and January immediately following the election? You know that these fires, whatever they were, if they had any cause, must have been the result of the provocation, and the intense incitement which the negroes had received in the death of Tom Roundtree, and Aleck Leach and Charley Goode, and the whipping of hundreds, and the maiming of hundreds of the negroes in that County. Whipping the negroes, and killing them throughout the County, and, then, because fires take place, justify the killing of Jim Williams because of those fires! Gentlemen of the jury, this was all one grand, continuous and complete crusade against the negroes—Radicals. According to the tes-

timony of all the witnesses whom we have put upon the stand, its one object had been to accomplish the result declared in the constitution of the order, of opposing Radicalism, and of terrorizing that negro population till they should be afraid to exercise their right to vote. Now, the attempt is made in this defense to substitute for this purpose of the Klan, and the killing and whipping of the colored people, or, as charged in the indictment, of injuring and oppressing Jim Williams because of his exercise of his right to vote, and of killing him for that cause, the comparatively innocent purpose of simply disarming a negro outlaw, who had threatened—but never till after his death!—to kill “from the cradle up!”

Gentlemen of the jury, this is our testimony, and our proof in support of this indictment. Robert Hayes Mitchell, this defendant, was a member of the party who entered the house of Jim Williams, and hung him on the night of the 6th of March, 1871. By evidence, which is not contradicted, he was there throughout that whole raid. The object of that conspiracy, of which he was a member, was the terrorizing by whippings and killings, of the negro Radicals of York County. He joined that conspiracy. On the night of the 6th of March he went in the execution of its purpose to injure and oppress, and did, in fact, kill Jim Williams, in pursuance of the purposes of the Ku Klux Klan, of which he was a member. He stands arraigned before you today for those crimes, and we ask your verdict, upon this evidence, of “Guilty.”

For Robert Hayes Mitchell, the prisoner at the bar, who can have on this occasion any feeling but pity? No man is so poor that he has not friends whose happiness is linked with his fate, and whose hearts will be wrung with anguish for his punishment and suffering. But today, unfortunately this defendant is the representative of an organization which is responsible before you and the country for a succession of crimes, monstrous and appalling, for a purpose, broad and general, of putting down and destroying a political

party by killing and whipping its negro members. I wish, gentlemen, we could ask for mercy upon Robert Hayes Mitchell. But if you could have at this moment the eyes of Fancy, nay, the eyes of Truth, behind Robert Hayes Mitchell, you would see the anxious eyes of a mighty Klan, an organization which embraces tens of thousands of members, stretching all over one entire section of this country. It is they, gentlemen, as well as Robert Hayes Mitchell, who are on trial today, and he is but the poor and unfortunate representative of this more guilty and horrible conspiracy. Beyond you, gentlemen, there is a power which can graduate punishment according to the guilt of the individual; but your duty today is merely to say whether Robert Hayes Mitchell did conspire with his fellow Ku Klux to deprive colored citizens of York County of their right to vote at future elections, and whether he went on the "Jim Williams raid" with the purpose of injuring and oppressing, and, finally, killing him in the execution of the purpose of the Klan, and because he had voted, at a previous election, the Radical ticket.

Gentlemen of the jury, no eloquence, no ingenuity, no art or power of forensic advocacy, such as will delight and impress you in the arguments of the distinguished counsel who will follow me, will ever efface from your minds the ghastly horrors of that night which witnessed those crimes. The bright moon looked down upon a scene never before paralleled in our land. The education, the intelligence, the property of York County, represented by the Ku Klux Klan, had then assembled to execute the purpose of the order, on the person of Jim Williams. Robert Hayes Mitchell is there. Williams is hung; hung by the Ku Klux Klan; hung because he is a Radical; hung in pursuance of the conspiracy whose monstrous nature was written in its constitution, which now receives its conclusive interpretation in the blood of its victim.

What American citizen can think of that scene without a shudder and a blush! Why did not the very elements—

ROBERT HAYES MITCHELL

why did not Nature herself cry to those wretches, "Halt!" Why did not the stones beneath their feet, and the piney boughs that sighed above their heads, bid them, "Stop!" I should have thought they would have heard such words as greeted the ears of the terrified Alonso, when all nature seemed breaking into voice to herald his crime:

"Methought the billows spoke and told me of it;
The winds did sing it to me; and the thunder—
That deep and dreadful organ-pipe—pronounced
The name of Prosper; it *did* bass my trespass."

No, gentlemen of the jury, the voice of nature, of conscience, of God, fell on deaf ears. The conspiracy passed on; the deed was done; the dreadful secret was hidden by the oath of death. Months pass by. Williams moulders in his grave. Robert Hayes Mitchell walks forth still safe and unpunished. But Justice—Justice, whom the ancients pictured with the feet of velvet and hands of iron—is on his track, and now, at this moment, holds him in her unrelaxing grasp, and commits him to your just judgment.

Such a responsibility, gentlemen, is great; but it is yours, and you cannot escape it. It is for you now to strike the blow which shall not only reach this prisoner, but, through him, shall reach that greater criminal, that conspiracy, which, in its inception and progress and in all its operations has been aimed at the destruction of your dearest rights, the striking away of the protection of an entire class of our fellow citizens. Arouse yourselves to the full height of your duty. Strike the blow which shall bring justice to Robert Hayes Mitchell, and paralyze that vast and remorseless conspiracy which stands behind him. Let your verdict be the invincible arm of the Government, striking down the oppressor and lifting up his victim.

MR. STANBERRY FOR THE PRISONER.

Mr. Stanberry. Your Honors and Gentlemen of the Jury: It is gratifying, gentlemen, not only to my learned friend who has just taken his seat, but to all parties, to witness with what close and undivided attention you have listened

to the argument which has just been delivered. You know, gentlemen, those of you, at least, who belong to the colored race, that grave doubts have been entertained whether, in consideration of your previous condition, you have arrived, at this time, at a state of improvement which would justify your receiving the right to sit in judgment upon your fellow men, where you now sit in that jury box. So far, gentlemen, you have shown a disposition to give undivided attention to the case. You have at least shown one qualification for a juryman—you have listened, but as yet, to one side—perhaps to that side to which your sympathies are most drawn. Now, gentlemen, can you hear the other side? Can you give the same undivided attention to the advocate for the defendant, as you have given to the advocate who has stood up for the Government? If you can do that, gentlemen, you have gone one step further, and a great step further, towards vindicating your right to sit in the jury box. But, individual attention is not all that is required of a juryman. The juryman does not hold up his hand before God and swear that he will listen to the argument and the evidence with undivided attention. That is not all; he swears that, after he has heard the testimony and listened to the argument, and the case is committed to his hands, he will truly, justly, and impartially decide between the State and the prisoner.

Now, gentlemen, if you reach that future point and show that you are capable of divesting yourselves of the prejudices of race and color; show that you can act with impartiality, whether the man on trial is black or white, Radical or Democrat; if you can go that other step forward, then, gentlemen jurors, I am ready to say, that you, at least, are entitled to sit in the jury box. If, therefore, you earn a title to exercise that supreme right over the lives, liberty and property of your fellow men, black and white, you have earned the highest title to enjoy all political privileges. Show yourselves fit for that, and you will show yourselves fit for everything.

Endeavor then, gentlemen, to make it evident that you are entitled to this right, to sit in that box, by the exercise of impartiality, by weighing the evidence without bias, without prejudice, and founding your decision upon the weight of that testimony, wherever it leads you, whether to conviction or acquittal. Why, gentlemen of the jury, the ancients—who were wise men, for there were wise men before our day—the ancients, whenever they represented the form of Justice, represented her with a fillet round her eyes; and why did they blindfold her? that when she came to decide between man and man, she might not see the parties, that she might not see a friend on one side, or an enemy on the other; but, giving her decision on which side soever right might happen to be. That is precisely the position in which a jurymen should stand. He should shut his eyes, having neither favors nor friendship, or any prejudice, either of race or political partisanship; he must do all that, or he is not fit for the jury box; and, if he sits there and does not do that, although he may not be made to answer here, there is another bar where he shall be called to an account for his violated oath.

Gentlemen, when my associate and myself came here from our distant home, to take a part in these cases, we did not come with any expectation of arguing any case upon the facts. We expected to argue the legal questions which, day after day, for a period of two weeks, you have heard us discuss at this bar; that was our business here, leaving it to the local counsel, engaged in the case, to argue these cases upon matters of fact when they came to be heard before the jury. But, as we sat here, these local counsel, our brothers of the bar, requested us to go further, and, at least, to give our attention to the case that was coming on, in the development of the facts, and to assist in the argument of any legal question that might come up. With that understanding, my colleague and myself took our seats, and, in addition to arguing the questions of fact that arose in the trial of the case, insensibly, we have been drawn into

the whole case. For, after having listened to all the testimony given for and against the defendant; having weighed, considered and examined the charges upon which our client was brought here, my learned colleague and myself came deliberately to the opinion that a case was not made out that warranted you in finding that Robert Hayes Mitchell was guilty under either count of this indictment. Now, gentlemen, you must not take my word for it, of course, but I say that we would not have appeared in this case, upon the facts, were it not that, in our deliberate judgment, this defendant has been brought here, charged with one offense, and an attempt made to convict him of another.

I shall now proceed to show, gentlemen, what Robert Hayes Mitchell is charged with in the indictment, and what is proved against him. This may lead me into matters of law; I may follow my brother Chamberlain, the Attorney General, in stating to you some matters of law, which you will afterwards receive under the instruction of the Court, but which I must state in order to make my argument understood by you. First, then, what is this man charged with? You have heard a great deal of violations of order, and outrages, and especially in reference to what is called this raid upon Jim Williams, terminating in his assassination; but you must first ask yourselves, are you here to try the murderers of Williams? are you sitting in judgment on a murder case? is there any one here to be arraigned for that murder? Not at all; the question is not before you whether he was murdered, and who were his murderers, that you may mete out justice to them; you have nothing to do with that; there is no such thing charged against this defendant.

There are three counts in this indictment; three distinct charges; three distinct offenses. What are they? The first is that Robert Hayes Mitchell combined with others with intent to violate the first Section of this Act, by unlawfully hindering and restraining divers male citizens of African descent, etc., from exercising the right and privilege to

vote at the October election, in 1872. That is the first charge, that the conspiracy he entered into was in reference to a particular election, designated as an election to come off on the third Tuesday in October, 1872. That is exactly the scope and description they have given in the first count. It was to intimidate divers citizens of African descent from voting at that election, to come off in 1872.

Where is there a particle of evidence that he has entered into such a conspiracy as that? Put your hands upon your hearts, and answer that question. Has a single witness testified to you that this young man has entered into such a conspiracy as that? If you should find him guilty of that count, you must find that he entered into that particular conspiracy—not the general conspiracy (I will come to that by and by)—to prevent their voting at a special election. It is not a conspiracy against general elections; it is a conspiracy against a special election, named and described in the count, that you are called upon to answer to under that first count.

What is the second count? It still remains in the indictment. But I must caution you against supposing that you are to try this defendant for what is alleged in that count, and I am glad that you are not to try him on that second count. What is it? They charge that Robert Hayes Mitchell, with a number of others, did conspire, with intent to injure, oppress, threaten and intimidate Jim Williams. With what intent? To prevent and hinder his free exercise and enjoyment of a right and privilege granted and secured to him by the Constitution of the United States, to-wit, the keeping and bearing of arms. That is the particular conspiracy stated there, gentlemen; that was precisely what my client was after. On that famous night of the 6th of March, as I will show you, he was on his way to Williams' house to get his arms out of his house, and to secure them from any further use by him. Right or wrong, that was his purpose; that was what he was after; and, therefore, that was an unlawful thing, as the law does not authorize

him to break into another man's house to get his arms. If they had adhered to this count, this defendant, notwithstanding all that could have been said by my learned colleague and myself, would have been convicted; you would have had plain proof before you that the purpose of that party, and this young man, as a member of it, on that night of the 6th of March, was to go to Jim Williams' house and to get his arms; but, gentlemen, that count is no longer in this indictment. It is dismissed; it is no longer under your consideration.

What is in this third count? It alleges that this defendant conspired, with others, to threaten, intimidate and oppress Jim Rainey, etc., for voting at an election on the third Wednesday of October, 1870. There is a very specific charge that this young man conspired with others to injure Williams, because he had voted at the election held in the fall of 1870. Gentlemen, where is the proof, I would like to know, that he entered into a specific conspiracy of that kind to injure Williams, on account of his having voted? Recollect, that is what is charged in this count; that he conspired to injure Rainey, by breaking into his house and taking his arms. But he conspired to injure him simply on account of his vote, given at that election, and that alone. Now, tell me, gentlemen of the jury, where you find a single witness who testified that this young man entered into any such conspiracy as that? Now, what have you got on the subject of conspiracy? There were conspiracies enough, according to the witnesses; but what are they? Conspiracies growing out of this written agreement which makes the constitution of the Ku Klux; that is the conspiracy of my learned friend, the Attorney General. Let us admit that it is, for the sake of argument, a conspiracy to put down the Radical party. Are we charged here with a conspiracy to put down the Radical party? There is no such thing here. We are charged with a conspiracy aimed at Jim Williams alone. The conspiracy which they prove out of these papers is a general conspiracy against the whole

ROBERT HAYES MITCHELL.

Radical party. What next? They say that the acts of the parties engaged in the Ku Klux organization show that they intended to put down this Radical party by murdering all the white Radicals and by whipping all the black Radicals, by controlling all the elections to be held, and prevent white and black Radicals, indiscriminately, from exercising the right of voting. A general conspiracy against the whole party; a general conspiracy to control all elections; this is the nature of the conspiracy they prove. Now, you may think, because they prove a conspiracy a great deal worse, infinitely more general and pernicious than this that is charged, therefore you can find him guilty of the particular thing; but, gentlemen, such is not the law; and I will now proceed to address the Court, on that part of the case, to show you what is the law of the case, by which you must be guided.

May it please your Honors, I was urging that, in this indictment, the charges are of a particular conspiracy, and that the defendant could only be convicted by proving this particular conspiracy; and I stated that the proof, as claimed by the Attorney General, was only as to a general conspiracy; a general conspiracy to control all elections; a general conspiracy to put down the Radical party; to kill, as one said, all the Radical white voters, and to whip all the Radical negro voters. Now, give the proof as large a scope as possible, and it is proof only of a general conspiracy. They have charged a particular conspiracy in the first count, and a particular conspiracy in the second. The conspiracy charged in the first count did not aim at all elections, but against certain individuals, of African descent, being above twenty-one years of age, to prevent them from voting at a single election, viz: that of October, 1872; the conspiracy is confined to that election alone.

The second count specifically charges a conspiracy against a single individual, Rainey, on account of his voting at the election held on the 3d Wednesday of October, 1870. I said to the jury, I had heard no testimony as to this spe-

clike conspiracy. And now, may it please the Court, are these special conspiracies made out by proof of a general conspiracy?

I first refer your Honors to Greenleaf on Evidence, page 101. (The counsel here read the authority.) Now, here the particular intent and particular conspiracy is to oppress and injure Rainey. They give no evidence of that particular conspiracy, but of a conspiracy in a general way, against all Radical voters. I also refer your Honors to Volume 3 of Wharton's Criminal Law, page 349. (Mr. Stanbery here read the passage referred to.) We see from this authority that where a special conspiracy is charged, it cannot be proved by showing a general conspiracy; and that the converse is also true, that a general conspiracy cannot be made out by proof of a special one. Therefore, proof of a conspiracy to put down Radicalism, and defraud Radical voters out of their votes, and to oppress them, will not sustain a charge limiting the intent to one voter by name. I now refer your Honors to a reported case, in Seventh Metcalf's Mass. Reports, page 509. (The counsel here read the authority referred to.)

It was not necessary to enter into particulars. In the first count, it was not necessary to say that the conspiracy had for its object a single election of 1872. But they have described that conspiracy as limited to one election, and, this being a descriptive allegation, it must be proved. You call this man to defend against a particular conspiracy to prevent people from voting at a special election, naming the election. At that time, the fact was the conspiracy that he entered into, and they expect to make out that he had not entered into such a special conspiracy, but had entered into a general conspiracy against voting at all elections. That will not do, as will be seen from what I have read, and I think my friend, the Attorney General, would not object to that. I have said that, in the judgment of my learned colleague and myself, the indictment fails for want of proof. Now, gentlemen of the jury, I hope you see the points I

make. I do not stand here to defend this prisoner against all conspiracy; I concern myself only about this case. I don't stand here to defend him from implication in the murder of Rainey, for he is not on trial for that murder. I don't stand here to defend him against a general conspiracy, for he is not so charged. But they have chosen to charge him with entering into a special conspiracy against parties intending to vote at a special election—a conspiracy that did not embrace any other election but that special one in 1872—and I ask you, upon your oath, is there a particle of truth that he entered into such a conspiracy as that? Have you heard a witness say one word about his having entered into a conspiracy to interfere with voters at the election in 1872?

As to the third count, where is there a particles of evidence that he conspired to injure and oppress Jim Rainey for having voted at the election of 1870? The gentlemen say we find it in that raid of March, 1871, in which he was engaged. They say the parties went into that raid to punish Rainey for having voted the Republican ticket at the election of 1870; that is what they say was the purpose of that raid; that was the purpose in the mind and heart of that young man when he joined the party that night. Now let us carefully examine the evidence as to the motive and cause of that raid, and whether it was a matter relating to voting at all.

Now, gentlemen of the jury, go back to what had happened before that night of the 6th of March. As early as the month of August, in the year 1870, the Governor of the State, according to the evidence, had placed in the hands of certain of the colored people of York County arms of the latest improvement, breech-loading rifles, called, I believe, Winchester rifles, the most improved and deadly weapon of that sort yet invented for rapid firing at long range. It was this sort of weapon that the Governor had placed in the hands of these people, organized as militia companies. Why is it necessary that a weapon such as this should be

given to this organization? And how did it happen that not a single gun is given to the white people? An election was coming on to be held in October; there was great excitement in that part of the country—not about the Ku Klux, for there were no raids at that time—but about the election. There had been an organization of Ku Klux in 1868, but it had died out—so far as Ku Kluxing was concerned—before August, 1870. When these arms were placed in the hands of these people, there were no threats from that quarter. Did the Governor give any arms to the whites? Did he place any Winchester rifles in their hands? When he armed the black company of one hundred men, did he give arms to a white company of one hundred men? When he armed the blacks to defend themselves, did he arm the white men to defend themselves? No; he armed the blacks and left the white defenseless. What further, gentlemen; not merely one company, but at least three companies of black men were armed in that County with the public arms, but not a single company of white men. A black face was a recommendation to him for a musket; a white face was no recommendation. I think, gentlemen, you will go for equality; I hope you of the colored race will not expect or desire to rule white men; you don't want to be better off than they are, do you? You don't want to stand above them, do you? You don't want to have arms and let them have none? Let me tell you, if you go for anything like that your triumph will be short, and you doom inevitable. Why, gentlemen, he will put a stop to that. If, instead of living on an equality with your white brethren, you seek to rule them, you will commit a terrible mistake; take my word for it, gentlemen. I am not an alarmist; you can only maintain your position here by fairness and justice to your white fellow-citizens.

Governor Scott put these arms into the hands of these companies—each having not less than one hundred men—for what purpose? It was for organization; organization is an important thing, say my friends, “organization of the

Ku Klux is a dangerous thing;" because, in organization men act together, and bring together an amount of force which nothing but an equal organized force can resist. If an organization of Ku Klux is dangerous, an organization of colored militia may be made even more so. Armed, equipped and drilled, and made ready for war, as Jim Williams' company was—gentlemen, put yourselves in the position of these white people. You know there are as good white people in York County as anywhere else, and, perhaps, some bad ones too; but gentlemen, there are women there who are not Ku Klux, innocent children who are not Ku Klux—there are people there who must be protected. After these guns are put into the hands of Williams' company, and the other two companies, what next? They go to work with active drilling before the election; drilling just as if another war was about to commence; not drilling with old muskets, with which men may learn the manual of arms, but drilling with these dangerous weapons. But why are these improved rifles put into their hands? It is expected there will be another use for them than simply going through the manual of arms.

They were intended to be put in a condition to be made deadly instruments; and they got bayonets, and shortly afterwards, by the agency of Jim Williams, the company had fixed ammunition, balls all capped, ready, at any moment, to do their deadly work. What, gentlemen, did he want with fixed ammunition? Tell me that. Why, if he only wanted to go through the manual of arms, and, by way of amusement, to go out and muster and play soldiers, if that was all, what did he want with fixed ammunition? If he wanted to make a noise with his guns, a little powder would have answered; but it was something more than noise that was required—it was execution. Therefore, he got that which the soldier gets when he stands in the front rank of battle. He got a bayonet and two rounds of ammunition for every one of his men. Against whom did he intend to use them, and under what circumstances? It

looks to me now, before we go any further, as if there was some secret motive about it. As if there was some person or persons against whom those guns were to be used. He didn't get that ammunition to shoot away merely for sport. What, gentlemen, did he get it for, and what was he drilling his men for? Now, if you can't answer that question, I will put a witness on the stand that will answer it; and who is he? Jim Williams himself, he shall answer it. What did those rifles, and your drilling, and that organization mean? He shall answer himself. Nine witnesses that have been examined—five of them white men and four of them of your own color—nine of these witnesses have given his answer, and now what does Jim Williams say? Let him speak, gentlemen, for himself. Let us begin with that witness, gentlemen, who, in point of time, was first in order. Let us begin with Mr. Fudge; you recollect the witness, gentlemen; any man that has seen that witness and listened to him would not very soon forget him. He struck me as a man of no ordinary mark. Mr. Fudge tells you that he lives within a mile and a half of Jim Williams; that he had lived there for some time; they might be called near neighbors; and he was of the Democratic persuasion, while Williams was a Republican. He says, just before the election last October, Williams came up to his house and called him out; wanted to see him. He stood on one side of the gate and Williams on the other, and said that he would like that he vote the same ticket with him. He was not coercing voters, but was persuading. Fudge replied that he should like to vote the same ticket with him. "I cannot vote your ticket," says Jim. "I cannot vote for certain persons," naming them; "can't vote for them at all," denouncing them as damned scoundrels. "You have got to come vote for my men." Fudge replies, "you will allow me to exercise my own opinion, and to vote my own way?" "Yes, but," says he, "I tell you if, in this election, that is now coming off my party is not successful"—gentlemen, pause upon the words, "my party is not successful—I will kill

from the cradle to the grave, and I will lay this County waste." That was the declaration he made at that time.

They asked this man on his cross-examination—"Were you frightened at that?" "No, sir; I was not." "Why not?" "Because there was but one man—man to man," and he says, "I have never been frightened at any man;" and I saw by his face and the calm, frank manner of the man, that he would want no help when he was attacked by only one individual. But he said he had an anxiety about his family. We asked him, "was Williams serious, or was he joking?" He says, "he was serious." Do you believe, now, that this conversation took place? Do you believe Mr. Fudge is lying? What right have you, gentlemen, to disbelieve that man? His testimony has not been assailed by any one; his character has not been assailed by any one. Did the manner and conduct and appearance of the man induce you to believe he was telling a lie? No, gentlemen; the impression he made was, in every respect, favorable to the man—cool, collected and determined; not alarmed, not at all—perfectly tranquil. Can you be justified in saying: We cannot and will not believe him; the man is perjuring himself and attempting to deceive us with a false narrative?

But he does not stand alone. Let us see, now, how he is corroborated; whether other men have heard the same declarations from Williams. The next in order, to whose testimony I will call your attention, is Lindsay. Fudge was a man of our color; Lindsay was a man belonging to the other race—he was a colored man. What does he say? Lindsay says that he lives on the road between Williams' house and Yorkville; that he was going to pay his taxes, and fell in company with Jim Williams on the way—both on horseback—riding towards Yorkville; and he found, from Williams, that he was going up to Yorkville to get ammunition for his company. When was this? The Friday before his death. Now, what took place? In the course of conversation with Lindsay he repeated this same threat, that he had made to Fudge the fall before, almost

in the same words. His words, then, were that he would kill from the cradle to the grave. But, to Lindsay, on that road going for his ammunition, he said his purpose was to "kill from the cradle up." He next, just before his death, has a conversation with one of his own color (Mr. McConnell—you remember him well—a large colored man, with a loud distinct voice.) In February, on the Sunday before his death, Williams was coming from Philadelphia Church and stopped at McConnell's house, and McConnell fell in conversation with him. He told McConnell he was going out himself—going out Ku Kluxing; he was going out in that business, and that they would hear of a mighty work to be done by him, and that the burnings that they had had were nothing to those he would hear of. "Was he serious?" "Yes, sir; seemed to be in what he said."

Again, Bratton, also one of his own race, says, some time in January, at Bratton's place, where he lived, Williams told him that he intended to rule; that he would Ku Klux women and children. I don't know whether it was this witness, but to several witnesses he said he was going to make war; that he had been with Sherman; that he had learned how to make war, and knew how to do it. Again, with Mr. Atkins—the white man at the mill—he said to him: "Mr. Atkins, this fuss between the black men and the white men, there is one way to decide it; let us go out into the old field and fight it out, and if we gain I will take"—that is the word he used then—"from the cradle up." Then, to Thomasson, colored, "I intend to sweep from the cradle up." Then, to Long, at the blacksmith shop. You recollect that conversation, gentlemen. It was after he had been down to Columbia, this spring, and had returned. He came back dissatisfied, and said, with an oath, that the Legislature was a set of drunken people, doing no good, idling and drinking, and that Governor Scott was no better than they were; indeed, he called him a damned rascal, and said Governor Scott had not kept his promises. Then what was he going to do? "Kill from the cradle to the grave." It

seemed to be a favorite expression with him. What to some other witnesses? Why, if the Ku Klux came down on him, what would he do? Kill the Ku Klux? Was that the retaliation he said he would make? Kill the Ku Klux? No; but if the Ku Klux came to interfere with the black people, he would Ku Klux women and children. That was the way he intended to retaliate. I think I understood the Attorney General to say retaliation was admissible. I was sorry to hear such a statement and such a doctrine as that, in a community where the races are in a state of antagonism. Why, gentlemen, if Williams had said, "if the Ku Klux come down here, and injure me, I will go up there and retaliate upon them," even that would not be justifiable. But that is not the thing Jim said he would do if those Ku Klux came down in that neighborhood against the black people. What then? He and his company would Ku Klux white women and children—the unoffending ones. That was the declaration, gentlemen.

Now, gentlemen, here is Mr. Lowry, who didn't hear Williams make these threats, but he heard of them. He met Williams and asked him if he had made them; "He gave me an evasive answer. I asked him if he had threatened to kill from the cradle to the grave. He did not answer, or answered evasively, but at last he says, 'I did make them.'"

The question was whether this man, Jim Williams, had made threats. Now mark it, gentlemen, it does not stand simply upon the testimony of the first witness; it is not confined to that talk with that farmer, but seven or eight other witnesses testify to the same threats—five white and four black—and one of them swore that Williams himself admitted to him that the threats which he had been charged with making he had made, and then said to him: "I was in Sherman's army, and learned how to carry on war; I am a captain now, and understand how to carry on war, and I have got the authority from Governor Scott to carry on war." Gentlemen, such a man as that living in that neighborhood! Now, assume that he was a white man, opposed

IX. AMERICAN STATE TRIALS.

to you in politics, your enemy, armed, with a company of white men at his back, under his influence, threatening you with burning, threatening you that he would take your family, from the cradle up, lay waste your property; would you feel quite easy, gentlemen? Would you consider that man a safe neighbor? One of two things you would do—move yourself from his neighborhood, or lay plans against him and join a party to carry them out, even at the risk of your life. Why, if it were a single individual that was making these threats, and had no power to support him, you might perhaps go to some Justice of the Peace and sue out some warrant, and have him bound over to keep the peace; but when he is backed up by a formidable force, and is the captain of that force, what could you do with so many disciplined soldiers, each one subject to his orders and willing to obey him?

Now, gentlemen, whether he intended to carry them out or not, is not the question. Did the people believe he intended to carry them out? Did it alarm the country? What is the evidence? What is the evidence of those who did not hear threats from Williams? At midnight, the whole horizon lit up at times with incendiary fires. Ah, says the gentleman, but not until after the Ku Klux had begun their operations. These peaceable citizens in York County, where there has been no Ku Kluxing, are to be held responsible for the Ku Kluxing up in the northeast part of the County. Are the people about Yorkville, and down in that part of the County where Williams lives—a broad belt, extending through from Yorkville, fourteen miles broad and ten miles long, where there had been no Ku Kluxing—are those peaceable men, with their wives and children, to be held responsible for these Ku Klux? It is any excuse to him, because he is raided on by others, that he should go and kill white men in that part of the County which is quiet; not that he should retaliate upon those Ku Klux and their wives and children, but upon the wives and children of men who never had done him any injury, but were living in peace!

Now, consider what manner of man he was. Their own witnesses say he was a good boy. He had a very bad way of showing it. Do good boys make threats like these? Is that evidence of being a good boy in that neighborhood? I don't know; this man may have been a very good boy until he got these muskets, but he was a very bad boy afterwards. His were the last hands into which such a dangerous arm as this should have been put. He was an infatuated man, and a dangerous man. I have not heard lately of one more dangerous. He was not a drinking man, or thieving man. I guess he was all right upon these points, but I tell you, the man was wrong; he was dangerous—dangerous, first, because he was not a mere drunkard or idler—he was serious in what he was about. What idea had the man got in his mind? That he had a mission to fulfill; that he was the champion of his race; that he was the man that was to lead the black man, not out of bondage—of actual bondage—but out of the bondage in which he was in the exercise of his rights as a voter and a freeman. He was to vindicate his race; he was to protect them from injury. How? Why? Under what circumstances? How was it to be done? In his mind it was to be done by force. He, therefore, had himself appointed a captain of the militia company. Then he had them drilled again and again, at night; accustomed them to the use of arms. Then he provided ammunition for them. He was doing all this, and, at the same time, was saying, "I am authorized to make war, and I am ready to go into it; come out, if you want a fight, here in this old field—race against race. I challenge you to battle; and, if I conquer, you take care of your wives and children and your property." This was the sort of man he was. Gentlemen, there were other companies in that county of York; there were two others, equally large and equally well armed. What is done? The fright, the danger into which these people fell had been heard, it seems, somewhere here, at the head of the Government. Persons were sent there, authorized to receive these arms; and the arms of the company at Yorkville and the other, both near these Ku

Klux operations, were surrendered. Not one of them afterwards molested! They lived there after their arms were given up, in peace and quietness. Who did not surrender his arms? The man who was at the safest and farthest distance from the Ku Klux—Jim Williams. You listened to the testimony of that witness, gentlemen, who said he saw Williams coming up the road with two or three men of his own color. He says they were quarreling, and the men turned up a road that forked near his house, but Williams came on to the house, and he said: "Jim, what is the difficulty?" "Why," he says, "they want to give up these arms, but I won't, and we quarreled."

Now, consider the condition of the people then. Imagine yourselves the white men, and of opposite politics, with a wife and children unprotected in your house, without any organization to protect you, and a man with a character and determination like Williams had threatened that if any outrage was committed upon him and his people, he would lay the whole country waste; that you would see a mighty work done, and that the fires that you had had would be nothing to such as would take place, and that he would lay the country waste and kill from the cradle up. Gentlemen, if I had lived there, in the vicinity of Yorkville, on a plantation, with my wife and my children, and such a devil as that was in the country—a man that would make such threats, and with a hundred armed men under his influence, obeying his word of command—if there had been such a man in my neighborhood, I would have joined the first squad that came along to go and disarm them. I would have taken the consequences; I would rather take imprisonment, if necessary, than for one single night allow such a demon as that to be in my neighborhood; and that is what every one of you would do. Why, gentlemen, if you have the same consideration for your wife and children as I have—putting yourself aside entirely—could you sit quietly at your firesides, hear such threats, see these fires, feel that the whole atmosphere was full of panic and alarm—could you sit there quietly and do nothing?

Why, you would not deserve to have wives and children. No; your first impulse would be to put down such a threatened danger as that; to disarm such a wild beast as that; and to disarm all those that were ready to follow him.

Why, gentlemen, I have no doubt that there were good and true colored men in that company that Jim couldn't get to go with him. I rather think those two or three colored men that quarreled with him would not have gone with him at the word of command. But some of them would, there is no doubt. You know what an influence over the race of colored people such a man will have, exciting their passions—accustomed to obedience, as they were; do not you know enough about your own race, gentlemen, to know that it wouldn't do to trust them, that it wouldn't do to allow them to follow such a leader! Are you immaculate? Is there no danger, gentlemen? I put it to you, as intelligent men of that race, are there no circumstances under which you would be alarmed? Are there not those in your race that you would fear and dread? That you would not leave in your house without your own protection; that you would not dare to trust the life of your wife, or the sanctity of her person with? Are there no such people in your race? Are there not bad men among you, and men who can be influenced by bad leaders. Now have you heard of any one that has quite as bad a record as Jim Williams, out of his own mouth and confession?

Let us see what this young man, the defendant, has done. He is a very young man, scarcely past his majority. Look at him. Does he look like a murderer? Does he look like a dangerous man? What kind of a man have they brought you among all these terrible Ku Klux? Why, gentlemen, it is about the weakest case that they could produce before you. If they must have a Ku Klux, let them get a right sort of Ku Klux—a Ku Klux that has injured somebody; get a Ku Klux that was about a bad business when he was engaged upon a raid. Let us try this man by that standard. Why is he a Ku Klux? He belonged to the society; he was

sworn in. What did he know about the Ku Klux at the time? Did he understand that it was a crime to go in that organization? Do you suppose Gunthorpe thought he was joining anything bad? Had he any motive other than for protection? Nobody could disclose the secrets of the order until he got in; but he was told it was for protection; and going into that society, gentlemen, could not make a man guilty, because he could not know, until after he had got in and became advised of the purposes of that organization, that there was any wrong in it. If there was no wrong in Gunthorpe's going in, what wrong was there in this defendant's going in? He knew nothing about these Klans, except that they were Ku Klux, and he supposed, as well as Gunthorpe, that they were organized in self-defense. What did he do? He went to one meeting of these Ku Klux, and to one alone, and it was for the simple purpose of electing officers. No pretense that any one told him that the purposes of the Ku Klux were anything other than the protection of the people, he went on this raid of the 6th of March. Now, gentlemen, was there no provocation for going upon that raid? Was there no reason why there should be a raid that night and why such an organization as the Ku Klux should go on it? They were going against armed men and an individual could not go alone, it required an organization to go there and take away those arms. Well, what organization in that county could do that thing except those Ku Klux? They required more people to go with them; they were making Ku Klux that night; what for? To go upon that raid. Now, gentlemen, I have said that the provocation for the people to go there was not absolutely legal, but it was such a duty as no man would shrink from who felt the fears felt in that neighborhood from the danger of leaving those arms in the hands of those men.

He appeared on that Pinckney Road, and, with him, four other young men, belonging to one family, called the Shearers. These four boys were there, and, I think, one or two others. He said they had on no disguises, and when the

party arrived from the Briar Patch, they initiated those four Shearer boys. What did they know about Ku Kluxing? They just took the oath, right there in the road. What was the purpose? Everybody understood it to be the purpose of that meeting—the testimony is abundant from their own witnesses, as well as ours, that the object of that particular raid was—to do what? What is the answer? To disarm Jim Williams and his colored company; to take away the arms. That was the purpose. Was it to take away his vote, or to punish him for having voted? Did those young men hear any such purpose as that? Did the defendant join or conspire to go with any people there? Not at all. No evidence of it whatever. Did he hear any one say in that crowd, on that night, that they were going to punish Jim Williams for having voted the Republican ticket at the last election? Why, says my friend, the Attorney General, being in that crowd, although he may have gone there for the purpose of disarming Williams, yet he is responsible for anything that is said by any one in that crowd. Why, that is new law to me, Mr. Attorney General, and, besides, it is not good law. With due respect to the Attorney General, the declaration of a party who is a co-conspirator in the furtherance of the conspiracy, is evidence, but not a declaration foreign to the purpose of the conspiracy. I am assuming that the object of this particular conspiracy, that night, was for the purpose of disarming this man, and not to interfere with his vote. I am taking it for granted that the proof is conclusive; but you say that another purpose was mentioned by some one in that cavalcade, though not heard by the defendant. They stopped in a piney field before they reached Jim Williams'. Who stopped there? This is one of the men who stopped. He didn't see Jim Williams that night; he did not go to his cabin that night; he came there, hitched his horse, and sat down quietly on the hill side. The detail of ten men went to Jim Williams'. What did this young man suppose they were going there for? He supposed they were going to get Williams' arms. Gentlemen, there may have been men in

that body—leading men there—who had a worse intent against Jim Williams than to get those arms. Gentlemen, I very much fear that there were some men there who secretly intended to take that man's life, and, perhaps, they had secret appliances with them. That may be; but they took care, gentlemen, to keep that secret from this young man and his companions that night. Why, gentlemen, it is true that this young man was willing to go when it was announced that they were going to take Williams' arms; and there was a strong excuse for his going. Suppose these men had said: "Now we are not going to take Williams' arms away; we are going to take his life away; here are the appliances; we are going to use these ropes." Would this young man have gone with them? At least, gentlemen, can you find that he would have gone, when he has had no opportunity to speak for himself? But this young man supposed he was going for what he considered a proper purpose, and what I would consider a proper purpose if I had lived in that neighborhood. How, in God's name, gentlemen, can you make him responsible for the horrid outrage that followed? Why, gentlemen, did not the men that were detailed to go down there and seize the man suppose they were going for his arms? They were absent about an hour, or less than an hour, and when they returned they were silent; the question was, "Have you got the arms?" No response whatever, but some showed guns; in a little while Dr. Bratton, in answer to a question put to him by some man where Williams was, said "He is now in hell." Gentlemen, I do not stand here to justify Dr. Bratton.

Dr. Bratton was old enough, and ought to have known far better than that. When you get Dr. Bratton, with such proof, deal with him; but, for God's sake, don't make this young man his scape-goat. I do not justify that horrid outrage that was committed there that night. It makes my blood run cold to listen to the relation of it; after they had got his guns, to take him out from his family, and, without a moment's time to make his peace with God, to launch him

ROBERT HAYES MITCHELL

into the other world, and, upon their return, to speak of it in the impious manner in which Dr. Bratton spoke of it! I do not stand here, and cannot stand here, to justify that; it is a crime that should not go unpunished; but, for God's sake, gentlemen, have the man who committed the crime before you, and then mete out the punishment.

Gentlemen, the right man is not here; you have the proof, but not the offender. When he or they, whoever they may be, shall be arraigned, then will be the time to mete out the just punishment of such a crime; but, gentlemen, I beg of you not to confound the just with the guilty. I pray you, do not allow your feelings to run away with your judgment, but deal fairly with this man, now before you; measure out justice to him. If he is not found guilty of these offenses, gentlemen, acquit him, and you will do honor to yourselves and give a guaranty to the community that a black man knows how to acquit as well as white men, and hold in even poise the scales of justice. But, if you must always have a victim, if, when the right men do not appear, you can get any man with a white face and punish him, vicariously, I do not want to see one of your race on a jury again; but I want to hear better things of you.

December 17.

MR. JOHNSON FOR THE PRISONER.

Mr. Johnson. Gentlemen of the Jury: More than a day having elapsed since you were addressed by the Attorney General, and by my colleague, it is possible, notwithstanding the close attention that you gave to each, that your minds at this time may not distinctly recollect the point which the case involves. I propose to set them before you, before considering the evidence which has been offered on either side, to support the charges in this indictment, or to disprove them. But there are some general considerations with which I hope you will indulge me, which seem to me to be not wholly, if at all, inappropriate to the occasion. Like my colleague, this is the first time that I have been called upon to address

a jury composed in part of our colored brethren. But I beg you to be assured, and I know when I give you that assurance, that you and the Court will believe me to be sincere, that on that account I entertain and apprehend no prejudice which can in any way affect your verdict. I have no prejudice, I know, and I believe that your good sense, and your native intelligence and desire to be right, will not permit you to indulge in any prejudice against the race to which I belong. We are all children of the same Father. In the dispensation of His power, and for the purpose of effecting some object of His own, He has given to some of us one complexion, and to others a different one; but from the first, when I was able to think upon such a matter, down to the present time, I never doubted that He endowed us all with the same faculties, gave us the same feelings, implanted in our bosoms the same instincts, and, above all, intended that we should be alike the servants of our Great Creator. Nor do I apprehend any danger to the prisoner at the bar from the fact, if it be a fact, that some of you have not been educated. If it is so, it was owing to no fault of your own; if it is so, it was your misfortune, and, as I believe, the misfortune of the country. In my view—and in that I follow out the precepts of our fathers, and, I think, the teachings of our religion—you are entitled by nature, and by nature's God, to all the rights which the white man claims himself to be entitled to. One of the objects of our common creation was happiness; but this world is more or less, under every circumstance, a world of trouble, and in order that we should all be happy, it was necessary that we should have some rights, without which, the possession of happiness could not be obtained. Ignorance, gross ignorance, may comfort itself with the assurance that it enjoys something of happiness whilst it may remain in a state of slavery. The mere comforts of the physical man may be his; the love of his family and of his children may fill his bosom as it does the bosom of the more intelligent and enlightened; but in a true and comprehensive sense, happiness is not his lot. Nothing

ROBERT HAYES MITCHELL.

is more true than what has been said, that "the hour which makes a man a slave takes half his worth away." The author might have gone further and have said that it not only takes half, but all his worth away as a man; and the moment he becomes a slave, happiness, in the true and general acceptation of the term, in the sense in which the term was used, is not to be achieved. And our fathers, therefore, said in that declaration which was born never to die, that man, by nature, is endowed with certain inalienable rights, amongst which are the rights of life and liberty. They placed the latter upon the same ground as the former; they seemed to have believed, and they believed correctly, that, without liberty, life itself is not worth the having. In the words of Cowper:

"'Tis liberty alone that gives the flower
Of fleeting life its lustre and perfume;
And we are weeds without it."

Gentlemen of the jury, white and colored, what I have thus said, I have spoken from my heart, and have spoken it from my head. Slavery, in my view, has been the vice of the age. I thank God that it was not inflicted upon us by our own conduct; it was fastened upon us by that mother country from whom we withdrew on the 4th of July, 1776, but it has continued until of late—continued, more or less, from necessity. How it was to be extinguished, what would be the consequences of its abolition upon the material wealth and safety of the people, were problems about which honest differences of opinion prevailed. Our fathers so thought when they drafted the Constitution of the United States, by which they provided, as you will remember, that the importation of slaves—not in so many words, but in terms which necessarily include them—should not be prohibited until 1808, a period of twenty years. But, fortunately for the land, the march of civilization, the progress of humanity, the teachings of the Gospel, in England, as well as here, had led almost the universal world to believe that such an institution is not only wrong and inhumane, but, by the dispensation of God in relation to all wrongs and actions of humanity, furnishes its own remedy and cure.

IX. AMERICAN STATE TRIALS.

The war, as you know, occurred in 1861. South Carolina fired the first gun in that conflict, which resulted in the death of hundreds and thousands of men, on either side, in our entire country. When I say that she fired the first gun, you must not understand me as imputing that she did what she thought she had no right to do. She believed—the large mass, at least, of her statesmen and people believed—that, by the Constitution of the United States, there was not only no prohibition upon any State to remove from the Union, but almost from the very nature of the Government, a direct confession of the right.

Many of the best men throughout the land, without reference to a political party, entertained the same opinion. She did, then, in the commencement of that conflict, what she believed she had a right to do. I think she was wrong, and, as it turned out for her interest, fatally wrong, at least for a time. But, from the first to the present hour, I have never doubted that, however true it might have been that though there were some few who were animated by ambitious aspirations, the large mass of the intelligence of the South came to the same conclusion, and armed for the conflict honestly. But the war ended, as you know, and ended so as forever to put an end to what, I think, was an erroneous construction of the Constitution. The war ended, and these gallant men, who had almost surpassed the valor of their forefathers, as exhibited during the Revolution, are satisfied with the judgment of the God of Battles. They submitted to the result. They are now citizens, with yourselves, of the common country, bound up with its destinies, and as willing and as anxious to maintain its honor unharmed, and to promote its prosperity, as any class of men to be found in any part of our extensive domain.

You, gentlemen of the jury, who were once slaves, as I suppose some of you were, need not apprehend any return to that condition. There has not only been no manifestation of a desire to reduce you or your race again to slavery, but, my word for it, from my knowledge of the white men of the

ROBERT HAYES MITCHELL.

South, the attempt would be resisted at all hazards. And not only would you find resistance of such power and magnitude as to defy all such efforts, but the opinion of mankind would reprove such an effort in terms from which those who should be mad enough to make the effort would shrink back with shame and horror. Slavery, then, is gone, and I thank God for it. I speak it now in South Carolina, and in the presence of those who, perhaps, at one time, thought it a divine institution. Slavery is now at an end, and, while I thank God for it, I trust, in the mercy of Heaven, that it will never be permitted to settle anywhere in any part of the civilized world.

But, gentlemen of the jury, there is one other topic, in relation to which I beg leave to make a few remarks. Mr. Attorney General, in his speech, in opening this case for the prosecution, asked, over and over again: "Where are the gentlemen who are parties to this conspiracy?"

He said that echo answered, where? "Why it is that counsel from a distance have been brought to defend this conspiracy? Why," says the Attorney General, "are they here in their professional capacity; they are not knights errant." Well, as far as I am concerned, I am too old to be a knight errant; but my friend, the Attorney General, will permit me to ask, in relation to such—although it was not intended to be an insinuation—an insinuation, what brings him here? As the Attorney General of the State, it is not part of his duty to conduct this prosecution; the sphere of his obligation is South Carolina—South Carolina laws and South Carolina jurisdiction. If outrages, more or less abominable, have been perpetrated, it was the business of Mr. Attorney General to see that they were properly prosecuted by the State courts. As Attorney General of the State, he has no official right to be here. He is here, then, under the operation of some retainer. He is no more a knight errant than we are; and, from my knowledge, derived from a short acquaintance with him, I do not think he has any particular desire to play knight errant. My colleague and myself, then, are in the

IX. AMERICAN STATE TRIALS.

same condition in which he is placed; he is discharging a professional duty, and so are we; and, as we shall respectively discharge it, we will be entitled to credit, or not. That he is entitled to credit, nobody more willingly acknowledges than I do. I have listened to his efforts, during the progress of this trial, and to his argument before you on Saturday, with unmixed delight, and I saw in it, throughout, the evidence of coming eminence because of existing ability. I believe, if he pursues the profession as he has commenced it, it will place him—if he is not already placed—at the very head of the profession which even now he adorns.

But Mr. Attorney General has remarked, and would have you suppose, that my friend and myself are here to defend, justify or to palliate the outrages that may have been perpetrated in your State by this association of Ku Klux. He makes a great mistake as to both of us. I have listened with unmixed horror to some of the testimony which has been brought before you. The outrages proved are shocking to humanity; they admit of neither excuse or justification; they violate every obligation which law and nature imposes upon men; they show that the parties engaged were brutes, insensible to the obligations of humanity and religion. The day will come, however, if it has not already arrived, when they will deeply lament it. Even if justice shall not overtake them, there is one tribunal from which there is no escape. It is their own judgment, that tribunal which sits in the breast of every living man—that small, still voice that thrills through the heart, the soul of the mind, and as it speaks, gives happiness or torture—the voice of conscience, the voice of God. If it has not already spoken to them, in tones which have startled them to the enormity of their conduct, I trust, in the mercy of Heaven, that that voice will speak before they shall be called above to account for the transactions of this world; that it will so speak as to make them penitent; and that, trusting in the dispensations of Heaven, whose justice is dispensed with mercy, when they shall be brought before the bar of their great Tribunal, so to speak, that in-

comprehensible Tribunal, there will be found, in the fact of their penitence or in their previous lives some grounds upon which God may say Pardon.

Gentlemen, you are not, therefore, to be prejudiced against my friend and myself because we are here, and because we have engaged in the defense of the man on trial. Be assured that if I believed he was the murderer of Williams, he would find no defender in me; but we are both here for a different purpose. We believe—and from the course of the studies in which we have been brought up, we might be excused for believing—that we understand the political institutions of our country, and with that understanding, we both came to the conclusion that the two laws of 1870 and 1871, under which these proceedings in your State had been going on for some time, were unconstitutional, and violative not only of the rights of your State, but of every State in the Union, as well as the rights of the individual citizen. We came, therefore, to see if that question, or some one question arising under those laws, could not be transmitted to the Supreme Court of the United States, whose judgment would fix, in these respects, the true construction of the Constitution. We have succeeded in part. You have heard, I suppose, gentlemen, and understood, during the progress of this trial, that a criminal case can be brought before the Supreme Court of the United States only because the tribunal before which such a case originally comes divide in opinion. The Court have divided.

There are here, now, two questions before you, upon which their ultimate decision has not been pronounced. They may divide upon them, and they, also, can be carried to the Supreme Court of the United States; but whether they go or not, there is one to go there, and I hope when the time comes for the discussion of that question in that tribunal, I shall have the happiness to meet the learned District Attorney and my friend, the Attorney General, if so long an absence from his official duties will permit him to be there. Then we will see who was right and who was wrong.

Now, gentlemen, with these remarks, which, as I told you, I thought were not inappropriate to the condition in which I stand, let me proceed, first, to state what are the points involved in this indictment. It originally had three counts, as the lawyers term it; that is, three separate and independent charges of crime or misdemeanors, neither dependent upon the other, each separate and distinct. What were they? The first was conspiracy, by intimidation and other illegal means, to prevent colored men from exercising the right of suffrage, in October, 1872. The second was for conspiracy to deny to James Williams the right to bear arms. The Court (that question having been before them in an antecedent case, the moment that particular count was stated by the District Attorney), said, "we cannot try that under this law as yet." But the District Attorney, in a moment almost of professional enthusiasm, abandoned what he had said, more than once, was the very thing he wanted to try. He seemed even to treat, although I am sure he did not so design, the suggestion of the Court with disrespect by proclaiming, in the face of the Court, "I will tear the indictment to pieces." We had done that for him, in a great measure. And his mode of tearing the indictment in pieces was to say that they did not propose to risk the part which formed the offense contained in the second count. I do not know, from what appears to my colleague and myself, that he has not some lingering hope that he may induce you to convict, not on any charge contained in this count, but because you may be induced to believe that the charges contained in the other two counts are more or less proved by the charge contained in the second count. If he shall state that in his speech, gentlemen, there is the corrector (pointing to the Court), and the correction will be sure to be administered. I think, then, the third count is not for conspiring to prevent poor Williams from exercising the right of suffrage in October, 1872, but to punish him for having exercised the right in 1870, or some antecedent period. There was no antecedent period at which he could have voted, except October,

ROBERT HAYES MITCHELL.

1870, and the charge, therefore, is, that these men went to his house for the purpose of punishing him—frightening him—not with a view to prevent his voting in 1872, but to punish him for having voted in 1870. And, when do they say that they went there for that purpose? On the 6th of March, 1871, several months afterwards.

Now, as you will see, gentlemen, each of the two counts that remain—the only two counts which can be submitted to you—the only two counts upon which you have a right to consider the evidence as applying here—are the first, which denounces him for entering into a conspiracy to prevent voting by his race in October, 1871, and the other for conspiring to punish Williams, as a voter, for voting at the antecedent election of 1870.

I will proceed to consider those two counts in their order, gentlemen; and, if I shall weary you, I beg you not to hesitate to let me know it. I will endeavor, however, not to do so. The conspiracy, then, in this count is a conspiracy against the elective franchise. The particular exercise of the elective franchise against which the conspiracy is alleged to have been made was the franchise to be exercised in October, 1872. Is there any evidence of that, gentlemen? Mr. Attorney General said that there were two modes of establishing a conspiracy—one, the written evidence, exhibiting the object and scope of the conspiracy; the other, acts in furtherance of the conspiracy.

What is the written proof—the written proof upon which the prosecution relies? Some of the witnesses say that, as far back as 1868, a conspiracy was formed, with the view of defeating or hindering the exercise of the franchise by the colored race, and that portion of the white race who, in the judgment of the prosecution, seemed to be entitled to a special honor, because they belonged to the Radical party in 1868. Who proves it? One or two witnesses say that they understood the association to be a political one. One, only one man swears that he understood that the political object of the association was to be accomplished by killing white

Radicals and whipping the black. Who is he? A Mr. Gunn! Nobody else. Not another witness who has been examined on either side states that. Some of them say that they believed it to be political; they believed the object was to put down the Radical party, and, as a consequence, to elect the Democratic party. But Gunn stands alone in swearing that it was to be achieved by the assassination of the white Radicals, and the merciless whipping of the blacks generally. If reasonable conclusions can be drawn from evidence, there is not one word of truth in his statement. Why did he become a member of the order? What did he do? He went upon one or two raids. This is the man who, from a mere sense of duty, divulged the secrets of a conspiracy of which he was a member, and in the execution of which he joined in raids—tells you that he knew, when he joined it, that the object was to assassinate the whites, and to lacerate the blacks, and yet he continued to be an honored member; went upon raids with the full knowledge that the design of the conspiracy was what he states; participated in the efforts to carry out that design, and when upon the stand didn't blush to tell you that it was not until some months afterwards that he woke up to the obligation, which, as a citizen of the United States, he was under, to inform the authorities.

Mr. Corbin. I notice the distinguished counsel is misrepresenting the testimony. Mr. Gunn did not go on any raids.

Mr. Johnson. Well, my recollection was otherwise; but I will assume now that the counsel is more correct than I am, because he had not only the evidence given on the stand, but he had it in advance, all written out.

Mr. Corbin. That is a mistake again.

Mr. Johnson. Well, I don't know; if somebody didn't write it out, then you had a paper before you that there was nothing written upon, that is all. But, if anybody wrote it, and if there was no paper before you in writing, there was, at your elbow, one who could tell you everything. I don't mean the Attorney General; I mean the gentleman who has figured so much in carrying out the purposes of his com-

mand; who has ordered seizures to be made in the night. I am not blaming him if he was acting under orders. He has had the witnesses, more or less, in his own camp, probing them to the bottom, and has been acting throughout this trial, *quasi*, as legal adviser, which I suppose he is; if he is not, perhaps he thinks himself admirably qualified to be. Don't understand me, gentlemen of the jury, as accusing intentionally the gallant Major with any wrong; but I think it will not be considered improper in me to say what the General-in-Chief of the Army of the United States has said more than once, that I think an officer of the United States might be better employed. So said Sherman; so say I; and so, I think, when the history of the times is written, will say posterity.

What does this innocent and fair man, who has become wakened up to the enormity of the conspiracy, of which, until then, he had been a willing member, whether he raided or not? He goes to Georgia; attends meetings of this association; pretends to be one of them; conceals the fact that he had then, or on any day thereafter, intended to disclose the secrets which he imagined were in his own bosom; deceives his confederates; plays false to his co-conspirators. He had taken the oath not to divulge. Well, what does he do? He learns that Mr. Akerman, lately Attorney General of the United States—not now—is some sixty miles off, in Georgia. It would be a pretty good thing in him if he took the railroad and made himself known to Mr. Akerman. So he did. He found the Attorney General; he told the Attorney General, he says, substantially what he has testified here. But it was pure patriotism; he did not look to profit; his animating principle was justice; he was inspired with the love of breaking up an association dangerous to the community, of which he all along had been a member. And having unbosomed himself to Mr. Akerman, he wended his way back without a dollar; paid his own expenses to and from the village where he found Mr. Akerman; and after he returned—about two or three weeks antecedent to this trial—his curiosity became aroused; he

IX. AMERICAN STATE TRIALS.

likes to see handsome things, and it induced him to go to Washington, a city that he had never seen; curiosity and his love of the arts carried him there; he wanted to see the city of Washington, the capital of our country; its great buildings, its beautiful squares; to partake, I suppose, of its refined society; and he visited Washington. What did he do when he got there? Why, he couldn't see it well without stepping into the Attorney General's office; almost the first thing that he did was to go into the Attorney General's office. For what? He had told the Attorney General, he says, all that he knew at the interview he had with him in Georgia. Why did he go there again just before these trials commenced? Merely for the pleasure of looking at Mr. Akerman? Why, there may be a pleasure in that; I don't know; he is quite a good looking man; but didn't he go for some other purpose? What was that purpose? It was to get the reward, either directly promised before or which he knew would then be promised, if he came here and put himself upon the stand as a witness. Is not that proof conclusive? What did Akerman listen to him for? The duties of his office, under all circumstances, are overwhelming. Why did he give this man, whom he had only seen once, an interview in relation to these trials? Can anybody answer? Didn't he promise to Akerman, in Georgia, that he might be relied upon by his evidence to support these prosecutions? He says, "No, no; I had no such design; I visited Washington for no such purpose." What followed? Akerman goes to him, or he goes to Akerman—it is immaterial which—and making his way through the adjoining room, in order to leave the office of the Attorney General, the clerk of the Attorney General says to him, "Here are two hundred dollars for you." What was the clerk going to do with two hundred dollars there? That is not a very safe place, from all accounts, to leave two hundred dollars on the desk, unless it is to be at once used. What occasion had the Attorney General or his clerk for \$200 that morning at that time? Why did the clerk arrest him as he was coming through the room, and tell him, "Here are \$200

for you?" Why did he count it out? Why did he make him give a receipt for the money? It was because the money was paid in the execution of a promise that he should be paid. My friend, the Attorney General told you that if we could only prove that such a promise was made antecedent to his disclosure, it would go very far, if not entirely, to destroy his evidence. Why, isn't it proved, gentlemen, by the circumstances? You do not expect that man to prove it; and they have not examined Mr. Akerman to disprove it; but just about this time he would be at leisure. Not a word from Akerman or anybody else; but this man suddenly and unexpectedly receives from one of the officers of the Attorney General two hundred dollars, and then he has the assurance from the stand to tell you, in answer to the questions propounded to him by my colleague, that he does not know what it was given to him for. Do you believe that he conjectured, when he was pushed by the examination, that it may have been paid to him to pay the expenses which he had incurred in visiting Mr. Akerman in Georgia, a distance of sixty miles, the fare for which, I suppose, would have been five or six dollars, perhaps the same to return—ten or twelve dollars in all. What a generous man Mr. Akerman is—with the public money. If he had given his own money to a friend, who was poor and unable to have borne the expense, it would have been a different thing, but he pays him out of the public purse. What right had he to do that? He paid him out of the public purse for his services, which, as he imagines, were rendered the public; for, if not, he himself would be a defaulter to the amount of \$200. Why did he take a receipt? It was to show, after the money was paid, that he might not be called upon to explain. There was, apparently, nothing in the Department, in the office, to show that there was any debt due from the Government to Gunn; yet there was evidence in the breast of Akerman, and, from the very nature of the prosecution, that it was paid for services rendered and services to be rendered, and he comes here with the two hundred dollars in his pockets, if he has not spent it, and he is the only witness who swears that the pur-

IX. AMERICAN STATE TRIALS.

pose of the conspiracy was to murder the whites and lacerate the backs of the colored people. Gentlemen, there is not a word of truth in it. He must be very little acquainted with the ways of men who can put any confidence in such a story.

Well, now, what have they proved? They call up a witness named Hope, one named Caldwell, one named Kirkpatrick, and one named Ferguson, members of the Klan, each one of them initiated on or about the same time, and each tell you that he considered the purpose of the association—was so informed when he entered into it—was self-protection. Was there no reason, gentlemen, to suppose that self-protection might prove to be necessary? Why the air had been heated by conflagration after conflagration; arms had been placed—whether wisely or unwisely I don't stop to inquire—in the hands of the colored race, and they were divided into companies; arms of the best kind, arms against which no squirrel gun would be any protection whatever—no pistol; arms which, in the hands of skillful men—and they could soon become skillful—would kill almost at a thousand yards. Threats filled the air; an association had been formed not peculiar to South Carolina, but to the whole country, more or less, called the Union League—a secret association. It is not for me to say that it was not an honest and patriotic association; but still a secret association. And all these things combined filled the minds of men and women with the thought that it would be as well that they should guard themselves against what might result from that state of things. No black man's house to be burned; no attempt to burn any; the conflagration extending far and wide, night after night, so that each poor lady, as she laid down in her bed at night, had reason to fear that she might wake and find her house in flames. What is the husband to do? What is the brother to do? What is the son to do? Band themselves together as a defense against any such threats as were apprehended; and these four men tell you that, as far as they knew anything about it, that was the whole extent of the conspiracy. Don't they tell the truth; do not the District Attorney and the Attorney General be-

ROBERT HAYES MITCHELL.

lieve that they tell the truth? If they do not, why did they bring them here as witnesses? Something they have proved upon which they rely, but when they ask you to put confidence in their statement—part of the statement—they at the same time deny that they possessed any title to confidence in relation to the whole statement.

You have it, therefore, from four of the prosecuting witnesses, that the sole purpose of the association was self-defense; and you, gentlemen, would have been parties to the conspiracy. Suppose the whites had been burning the houses of the blacks; suppose the whites had been threatening the women and children of the black race; would anybody blame the blacks for combining to guard against such catastrophe? Why, certainly not. Self defense is a law of nature, written as a duty on the heart of every man as he comes from the hand of his Creator.

Well now, gentlemen, this young man joined in 1871—the young man now upon trial—joined the association in January, 1871. Is there any proof that anybody told him what the object of the conspiracy was in relation to the blacks? Not a word—not a word. He never was at but one meeting of their association, and upon this raid. And what did he suppose was the object of the raid? Why look at the witnesses upon the part of the Government, gentlemen; I cannot state all their names. They told you that the object of the raid of the 6th March was to obtain guns, said to be in the hands of black men. Was that the object? If it was, it was not the object stated in either of those counts; if that was the design, as far as this indictment is concerned, it was an innocent design. Wasn't that the object? I think there are nine men who have been examined, Lindsay, Long, Lowry, Fudge, Hinson, O'Connell, Bratton, nine—four colored and five white—they tell you that, as far as they knew—and they went upon the raid—the purpose was, to get these arms.

Gentlemen, what was done? As far as this young man is concerned, he went; he was ordered to dismount, stand with the horses, said several of the witnesses examined on the part

of the Government, against him. There is no charge from them, as far as they have stated anything about it, except to procure arms; he remained with the horses. On their way there they tried to get guns; on their way back they tried to get guns; they got guns, and at Williams' house; and there is not a particle of evidence, even, calculated to make you suspect that this young man entertained any other impression than that the object of the raid, on that night, was to get the guns from the hands of the blacks. Now, that may or may not be our offense, but that is not the offense charged; that may or may not have been justifiable; but that is not your inquiry. They have abandoned that charge.

But the fact of making the charge—I beg you to bear in mind, the fact of making the charge—that this man, on that night, entered into the conspiracy to obtain arms, is evidence to show you that, in the judgment of the prosecutor, that was the object. They wanted a double chance of convicting the young man; if they failed in convicting him on the first count, and failed in convicting him on the third count, they supposed, upon producing evidence that the purpose of the raid was to procure arms, they would be able to convict on the second count, but the accusation to be found in the second count is at war with the accusation to be found in either of the other counts. This second count charges no purpose to interfere with the votes of the black race, charges no purpose to punish anybody for having voted, but is content with accusing the defendant with having, contrary to the Act of Congress, or some other law, which they tell us is to be found in the statute book, denied to Williams the right, which he had, to bear arms. Now, gentlemen of the jury, suppose these four men, or however many there were—I forget the number—whom the Government has examined, who are members of the association, went upon the raid, were now indicted before you for having conspired to defeat the blacks from voting, denying the right secured by the first Section of the Act of 1870, or had been charged with punishing Williams for having voted in 1870, would you convict them, supposing their

statement to be true? They can tell their story; the prosecutor has placed the defendant in a position in which he cannot be heard in his own defense. What right have you to suppose that he intended anything else than what was intended by the witnesses examined on the part of the Government? If you would not convict them, I do not see, gentlemen, how it is possible for you to convict the accused. He stands in a like condition exactly. They bring up the conspirators; they do not propose to proceed against them; they put them upon the stand, and upon their own statement they would have no right, legally, to proceed against him. But they select this poor young man, just arrived at maturity, and ask you to convict him without the least particle of evidence that he knew anything of the object of that raid, except what was known to each one of the four men the Government is relying upon to convict him; first, upon the ground stated by the Attorney General, that when a conspiracy is proved to accomplish a particular purpose, and brought home to the knowledge of all in the conspiracy, the act of any one in the prosecution of the conspiracy is evidence against the rest.

Now, you are asked to convict this young man because Dr. Bratton, or some others associated with Dr. Bratton, on the night of the 6th of March, perpetrated a foul and disgraceful murder upon poor Williams. You are asked to convict him, because, upon some other occasion, upon some other raid, in which the defendant was not concerned, they perpetrated a gross outrage upon another man named Rainey, and upon his wife, and his daughter, of which he is just as innocent as either of you, and not to be convicted, therefore, except upon the ground that the act of one is the act of all. If the act of one is the act of all, why in the name of justice, is it that these prosecutors have not brought before you those criminals upon whose testimony they are relying for the purpose of securing the conviction of this alleged criminal.

Gentlemen, I'm wearing out my own strength; I have not time nor strength to go through with this proof, and there is but one other consideration which, before closing, I will

trouble you with. "Oh!" says Mr. Attorney General, "it was a horrid association—I do not use the language, he uses much better than mine—"it was a horrible association; its object was to put down the Radical party, not any political principle, that was not the purpose, but to prevent the Radical party from coming into power or remaining in power." Why, that is something new to me, that that should be considered an offense. I wonder what was the object of the Union League, if that was not to put down the Democratic party, if that was not to guard against their coming into power? I suppose you all know what was the purpose of the League. It was to effect a combination to accomplish a political end—an end which those concerned in the League had a right to accomplish if they did it by any means that were not criminal or wrong in themselves.

Now, suppose then, gentlemen—I am imagining cases, or, I am about to imagine a case—suppose you apprehend what might be the result of placing in the hands of the Radical party the government of South Carolina; suppose you apprehended that one result, and a speedy result, would be to treble or quadruple the expenses of the government, would be to enhance the tax, if not in nominal amount, by enhancing the assessment of the value of the property; suppose you believed—I am not stating that fact is so—that the result would be to inaugurate an era of corruption, and that that would pervade every branch of the State Government, Executive and Legislative. Suppose that you believed that a debt of five or six millions would, under Radical management, swell into a debt of fifteen or twenty millions of dollars; suppose you believed that the effect would be to tarnish the fair character of South Carolina, to blight her otherwise pure financial faith, to strike down her credit in the market; would you think it any offense, if such things are conceived as possible—such results considered reasonable—to bind yourselves together to put down the Radical party. And, gentlemen, when I say the Radical party, don't understand me as meaning to impute that there is not in the masses of that party as much honesty

as there is in the masses of any other party. Bad men are to be found in all parties, and in these days corruption fills the air; every branch of the public service, more or less, is marked by it. Every day brings to the public view some startling defalcation; every hour they sink deeper into the faith and honor of South Carolina. Who is South Carolina? Gentlemen, from her politicians in modern times I greatly disented; but who was South Carolina in former times? Who were the Marions and the Sumpters, and the Moultries, and the Johnsons, who, with dauntless bravery and matchless skill, carried our fathers through the perils of the revolution? South Carolinians! Who were the men who figured most conspicuously in the convention that gave to the world, as well as to us, the purest form of government ever devised by man under Providence for man's government? The Pinckneys and the Rutleges! Who were those who contributed, in the councils of the States, to make the name of South Carolina honored throughout the land? The Lowndeses and Calhouns! Then, under their management, South Carolina was one of the most peerless of the States. Now look at her! Her sons—and you, gentlemen of the jury, are equally her sons with those of the white race—her sons, all of them, if they do not now, will, ere long, wish the government of South Carolina had not fallen into Radical hands.

A word further, and I shall have done. The colored race and the white are embarked in the same great experiment. You have the same interest in that experiment that the white race have ever had or can have. You must wish—I am sure you do—that the prosperity and honor of South Carolina may be revived; and, whether you be Radicals or not Radicals; whether you be Democrats or Republicans, I am sure you will see to it that, as far as you can accomplish such an end—you will use your best efforts to redeem South Carolina from the sad plight in which she is now placed.

A word more, and I am through. Look at that young man! Mr. Attorney General could not help using the words that were in his heart, and saying he was enticed into that con-

spiracy; he could not help saying to you: "I pity him." He could not help saying that he wished that the men who perpetrated these outrages could be brought to justice. He cannot wish it more than I do—properly brought to justice. But this young man, who, as I understand, went through the perils of the unhappy civil war with manliness and courage, is now the husband of a young wife and the father of a little child. It is not proved that he made any attempts to do anything wrong, but upon him the wrongs done by others are to be visited, in the view of the prosecuting counsel, upon some notion of the law. He is to be condemned, and, whatever may be the judgment of the Court may award, is to suffer that judgment. Can you, gentlemen of the jury, say guilty as to him upon the testimony of men who, by their own confession, are as guilty as he is?

MR. CORBIN FOR THE PROSECUTION.

Mr. Corbin. Gentlemen of the Jury: It is with pleasure that I announce to you the approach of the termination of the trial of this cause. I have no doubt it is a gratification to you and to the Court. You, gentlemen, have sat with patience, listening, day after day, to the argument of counsel upon legal questions, about which you are supposed to know nothing. The distinguished counsel on the other side have indulged in the widest latitude in the cross-examination of witnesses, and in the introduction of testimony. In fact, the widest range possible has been permitted, and sufficient time been consumed to tire the patience of us professional gentlemen, who are accustomed to such labor; hence, how far more the patience of laymen, to which class you belong. But, gentlemen, throughout this trial, what I have said, what I have done, and am about to say, I have said and done, and am about to say, in the discharge of a high public trust and duty, as the prosecuting officer of the Government of the United States. I take no pleasure in the prosecution of this single individual. I take no pleasure in the prosecution of any criminal, in his sentence, or in his punishment. The Government, which it is my duty and pleasure to serve,

is a government of law. It is a government that guards with jealous care the rights of its citizens—the highest cannot escape its power, and the lowest feel its protecting care.

Gentlemen, we have lived near a century in the last ten years. The ballot, which is the symbol of power in this government, has passed into the hands of those who were lately slaves, to be wielded by them in common with the white citizens of the country. The ballot, which has heretofore been, in the eyes of the colored race, the symbol of oppression, has now become to them the symbol of protection and the symbol of power. Not only the symbol, but the power, in fact. The colored race, and I rejoice in it, has been emancipated. Two hundred years of unbroken bondage have been terminated, and the slave who once traveled his lowly round, driven by the lash of a master, now stands forth a freeman, clothed with all the rights of an American citizen. In this case, gentlemen, we have charged, and we have attempted to prove, that these newly acquired rights, this franchise conferred upon the emancipated Africans, has been conspired against; that a terrible conspiracy has been inaugurated, not only in this State, but in adjoining States, to rob our colored citizens of African descent of their newly acquired rights—the rights of American citizens.

Gentlemen, I do not wish to indulge, and it is not my habit to indulge in general discussions foreign to the issue before the jury. The gentlemen who have preceded me, the distinguished counsel upon the other side, have seemed to be addressing themselves, during a large portion of their time, to somebody else than you—doing something else rather than trying to aid your minds in the solution of the question before you, namely, the guilt or innocence of this prisoner. Gentlemen, I shall reply to what they have said, that I deem important to reply to, in the progress of the argument.

First. What is the defendant charged with? The first count of the indictment charges that the prisoner, with others, unlawfully did conspire together, with intent to violate the first Section of the Act entitled "An Act to enforce the rights of

the citizens of the United States to vote in the several States of this Union," &c., "by unlawfully hindering, preventing and restraining divers male citizens of the United States, of African descent, above the age of twenty-one years, qualified to vote at any election of the people in said district," &c., and by other unlawful means not allowing them to vote at an election to be held in October, 1872. The questions, then, are, under this first count: First, Did such a conspiracy exist? Second, Did this prisoner at the bar enter into, or become, a party to it? Both of these are questions of fact; both are to be determined by you, from the testimony given you here in Court. First, Did such a conspiracy exist? Upon that question, we shall present to you the constitution and by-laws of the organization; then the testimony of its members, those who wore its gowns, used its signs, carried its pistols, blew its signal whistles and participated in its crimes. Finally, the testimony of the poor creatures who felt its blows, writhed under its scourges, and were made widows and orphans by its murders. First, the constitution—and you will mark that there is no question, no dispute about its authenticity.

The distinguished counsel on the other side, in the conduct of this case, have never hinted that this was not the constitution of the Ku Klux Klan; they have never, by testimony or argument, attempted to persuade you that this was not a genuine instrument, a plan of organization under which the operations of this inhuman order were carried on. What does it propose? The very first principle, the foundation stone upon which it rests, is: "We are on the side of justice, humanity and constitutional liberty, as bequeathed to us in its purity by our forefathers." Gentlemen, what does that mean—"constitutional liberty as bequeathed to us by our forefathers?" Let us dwell for a moment upon it. Our forefathers framed a Constitution which the Supreme Court of the United States has declared, over and over again, recognized slavery, protected slavery, and that the slave escaping from the State where he was held to labor, into any other

State, should not, in consequence, escape from bondage, but should be delivered up to the person claiming his service. The Supreme Court of the United States said that the master might pursue his slave into any State in this Union and return him to bondage. This was the Constitution, this the constitutional liberty, in reference to the colored man, that was handed down to us by our forefathers. That Constitution, the Supreme Court of the United States said, meant this, that the black man had no rights that the white man was bound to respect.

Mr. Johnson. They never said any such thing—I beg your pardon.

Mr. Corbin. My distinguished friend may look in 19th Howard, in the Dred Scott case.

Mr. Johnson. The Judge that pronounced that decision is dead. If you will look into that decision you will find that, so far from stating what the counsel stated, it was said that there was a time when a black man was supposed to have no rights which a white man need respect.

Mr. Corbin. But that was the ancient Constitution, and the Court said that that view obtained.

Mr. Johnson. He didn't say any such thing. If there is any doubt of it, gentlemen, we can produce the books; the highest Court in this country used no such language. The authority they relied upon was the legislation of the State, not the legislation of Congress. He cited, for the purpose of showing the slavery in the colonies and separate States—Connecticut, Massachusetts and two or three Northern States—for the purpose of showing that slaves, or blacks, were treated as if they had no rights that ought to be respected, though he regretted it. He is dead now, and it is due to him that he should be vindicated from what seemed to be outrageous misrepresentation of his judgments and declarations.

Mr. Corbin. Gentlemen of the jury, the book is there and the decision is there; it is to be read of all men; and I am not the only one in this country, but

one of the millions, who look upon that decision as a stain upon the records of the Supreme Court of the United States; but it was a decision of the Supreme Court of the United States, and as such, gave law to the country. But, gentlemen, however that may be, there is no doubt about this, that this Article of the Constitution protecting African slavery, was in the Constitution as handed down to us by our forefathers, and that is what is meant in this first Section of the Ku Klux Constitution. It meant more; it meant that we stand by the Constitution in that respect, as it was, not as it is now—not with the thirteenth, fourteenth and fifteenth amendments in it. It means, we reject the results of the late war. We trample upon these amendments of the Constitution, and we intend to destroy and defeat them. That is what this Ku Klux oath meant, beyond question; and the distinguished counsel on the other side cannot gainsay it by any argument. Now, what do they mean when they say constitutional liberty, in its original purity? The thirteenth amendment of the Constitution abolishes slavery, and the fourteenth amendment protects the newly enfranchised citizen in his right of property, and the fifteenth amendment protects him in his elective franchise. They say, we trample upon all that; we stand by constitutional liberty as it was given to us in its purity by our forefathers.

Let us examine the next principle of this Ku Klux instrument. "We oppose and reject the principles of the Radical party." Not the Radical party, but its principles.

Gentlemen, this is but a corollary to the first plank cited. What are the principles of the Radical party? We oppose and reject what principles? Why, gentlemen, if any principle of the Radical party has been prominent—if that party has discussed anything during the past five years, and has accomplished anything—if it has made a record which shall be carried down through the distant ages—it has made prominent, discussed, accomplished and recorded, for all time the thirteenth, fourteenth and fifteenth amendments to the Constitution. These, in truth, may be said to

be the principles of the Radical party, and they have been the chief objects and results of its labors for the last ten years. Other things have been talked about, but these are the foundation stones upon which the Radical party was built; and I say to you, gentlemen, that when it accomplished the thirteenth, fourteenth and fifteenth amendments, it had done, I had almost said, more than was done by the early revolution in this country, which severed the connection of this country from the mother country. These amendments will live when the names of parties are forgotten; but if names are remembered at all, they will be remembered as principles settled by the Radical or Republican party of 1866, 1867, 1868, 1869 and 1870.

But this organization proposes to defeat, put down, and destroy these principles of the Radical party. Gentlemen, this Ku Klux organization which has this instrument for an exposition of its principles, is for the purpose of destroying the Constitution as it now is. Is there anything to lead you to believe this argument to be untrue? Read it for yourselves. Why have not the distinguished counsel on the other side told you what it means; why have they not explained the instrument? They could not do it, they had the opportunity day after day, and hour after hour. They have heard it read, and it is in proof; you have heard the witnesses, and heard, as one after another has come upon the stand, that he took that Ku Klux obligation, first in 1868, and then, from time to time, up to last January.

Now, gentlemen, how does the Ku Klux Klan, the clients of my distinguished friends on the other side, propose to accomplish the object set out in this first article of their constitution? This constitution and by-laws shall answer. "Each member shall provide himself with a Ku Klux gown; each member shall provide himself with a pistol, and each member shall provide himself with a signal instrument." A pistol, a Ku Klux gown, and a signal instrument! These are the means. This is the way it proposes to carry out its principles. They propose to assault the rights of the col-

ored voters in this country. They propose to do it in disguise, with pistols, and, silencing the human voice, direct all operations by the sound of a signal instrument. It is speaking for itself; carrying out its full purposes.

But they say, how do you know the organization is aimed at colored men? We answer, the by-laws say "no person of color shall be a member of this order." Why? They propose to assail colored people, and could not do it if persons of color were permitted within the organization. The purposes announced in the oath, the means by which those purposes were to be carried into effect, and the fact that no person of color could be a member of the organization, establishes the character beyond controversy. This fell device, this foul design, points to the dark deeds of the Ku Klux Klan. Gentlemen, in my judgment, we might stop here, and ask for a verdict of guilty against this defendant. Look at the paper itself. It alone fixes the seal of guilt upon every member of this order, because, gentlemen, remember that a conspiracy does not consist in carrying out the objects of the conspiracy; it does not consist in killing Jim Williams; it does not consist in breaking down houses, and in flogging men and women in York County; that is not the conspiracy; but the conspiracy is in the agreement, the concerted, united purpose to do those things.

But, gentlemen, we propose to go farther, and not only to read you the agreement—not only to present to you the constitution of the conspirators, which the Court will interpret to you—but to show you how this Ku Klux Klan carried out its fell purposes. We will show you that the constitution and by-laws, and acts of the members, the voice of these midnight raiders, all agree and harmonize together; and, gentlemen, having shown you this, we shall ask you to pass your judgment upon the conspiracy.

Gentlemen of the jury, my assistant, the Attorney General, has done me the kindness to get the book to which I alluded in the early part of this argument. It is 19 Howard, page 407, and contains the decision of the Supreme

Court of the United States, and inasmuch as the distinguished counsel on the other side chose to contradict me most emphatically, I now propose to read in your hearing what the Supreme Court said in that case. It is as follows:

"In the opinion of the Court, the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

"It is difficult, at this day, to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the Constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

"They had, for more than a century before, been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion."

This, gentlemen, was constitutional liberty of the olden time; this was constitutional liberty in its purity, as be-

quested to us by our forefathers, as I stated a moment since. I propose to introduce to you two classes of witnesses to interpret this memorable constitution of the Ku Klux Klan. First, I propose to introduce those who have been inside of the Klan, who have learned its dread purposes, worn its gowns, carried its pistols, and blown its signal whistles. Then, gentlemen, I propose to introduce to you those who have felt its blows, writhed under its scourging, and been made widows and orphans by its cruelty.

First comes Mr. Gunthorpe. Gentlemen, you heard him upon the stand. He said: I joined this organization in 1868; I took the same oath, as near as I can remember, as that in this Ku Klux constitution. I understood, when I joined it, that it was a society for mutual protection. When I got inside of it I learned that it was an organization in the interests of the Democratic party, and I rejected it and withdrew from it. I didn't know that there was any danger from colored people, but did not know what might occur, and I joined the society for mutual protection. When I got into it I then found that it was a cheat and a lie.

I was told that at a meeting of the Klan it had agreed that we should go to Rock Hill, and, by crowding the polls, prevent the Radicals from voting.

This, gentlemen, was what this Klan proposed in 1868, as it interpreted itself; this was what they meant by being on the side of constitutional liberty as bequeathed to us by our forefathers; this was what they meant by opposing the principles of the Radical party, viz: depriving Radical voters at the polls of the right to vote.

Does anybody dispute Mr. Gunthorpe? Is there a person here who questions his veracity? You have seen him on the stand. No fairer, franker, or bolder witness ever stood there. He cannot be impeached. Who is the next witness? Mr. Gunn. We have had, this morning, an attack upon that gentleman. The distinguished counsel on the other side has followed him to Georgia; followed him to Washington; followed him back to South Carolina, and followed him to

this court. And what do they say? They say he is not entitled to be believed, because he received from the Government at Washington, two hundred dollars, for the time and loss to his business in seeing the Attorney General of the United States, and giving him the information that he possessed, receiving that compensation two months after the services were rendered.

Now my associate, the Attorney General, has told you, and he said what was true, that no motive of a pecuniary character can be attributed to Mr. Gunn. He was not told in Georgia that he would be paid if he went to Attorney General Akerman, but he went to Cartersville, Georgia, to see him, and was not promised, if he went, one single cent. He was without pay until he found himself in Washington, four months after, when he went to the office of the Attorney General, and there the Attorney General gave him this compensation for his time and trouble. If the compensation had preceded the information, then it might be fairly said that it was tainted with purchase money, and some slur cast upon it. Mr. Gunn, through his brother-in-law, to whom he revealed that a horrible crime was about to be committed up in York County, S. C., against Mr. Wallace, was reported to Attorney General Akerman. He did not seek the Attorney General first, but, having revealed the fact to his brother-in-law that he was inside of the Ku Klux Klan, and that the Klan intended to murder Mr. Wallace, a member of Congress from York County, South Carolina, his brother-in-law communicated the fact to the Attorney General, and the Attorney General sent for him. Does he appear here as a swift witness? Is he here offering to sell his information to the Government? Not at all. But his heart (and I imagine it would have melted a much harder heart than his), relented when he learned that the Klan to which he belonged contemplated a most horrible murder, and then he revealed the fact that has since become known to the Government. Why did the distinguished counsel on the other side assail him? It was be-

cause his testimony is important. Could he not have concealed the fact that he had received compensation? Is there any evidence except what he gives upon the stand? Had he lied in other respects, with the oath of God upon him, would he not have concealed this? Would he not have done so, had he been such as the distinguished counsel would have you believe him to be? But no, gentlemen, he tells you the truth, frankly and fully. Further, every word that he has said of importance is corroborated, not only by the constitution and by-laws of the Klan itself, but by every witness who has testified in the case, so that, gentlemen, if you believe him to be a liar in general, you must believe that, in this instance at least, he has told you the truth. There is no ground for saying that Mr. Gunn is not to be believed; there is not a shadow of foundation for such an assertion. I do not like to allude to it, gentlemen, but it may be that there is a little information that came out in the testimony of Mr. Gunn particularly disagreeable to these gentlemen. I don't allude to this to prejudice your minds against them, but I can well understand how it grated upon their ears. It was the fact that the Klan were raising money to pay them for their services here. Gentlemen, I have not the eloquence or the strength of language to depict to you my hatred, my disgust, my profound horror of the Ku Klux Klan and its deeds. I adopt the language of Mr. Johnson as he denounced it to you. No wonder that he felt annoyed at Mr. Gunn that the Ku Klux were collecting money from their Klan in Georgia to pay him for his services for defending the Ku Klux brothers. What does Mr. Gunn say about this order? You saw him upon the stand; you saw how frankly and fully he testified. He says that the objects of this order are just what the constitution indicates them to be, and that its purposes are to be carried out by killing the white Radicals, and whipping the black ones. Gentlemen, all these are startling facts for Mr. Gunn to announce in view of the other testimony in the case? Have the Klans not, gentlemen, killed

the white Radicals, whipped, scourged and broken black Radicals? Has Mr. Gunn told you anything that does not appear in this very case and throughout the testimony of all the witnesses?

There is no question about it, gentlemen. I say, if Mr. Gunn never told the truth before, he has certainly told it now. He is inside the order. Why, the distinguished counsel assails him and says he is just as bad as the prisoner, and asks, why does not the District Attorney prosecute him? Why does he not stand with Robert Hayes Mitchell at the bar? Why, gentlemen, you know—and no person knows better than Messrs. Johnson and Stanbery—that the testimony of accomplices is constantly received in Court, and not only received, but is absolutely necessary to disclose the secrets of organized crime—such an organization as this. Why what is it? It is an organization bound together by a most terrible oath; every member raising his right hand to heaven and invoking the vengeance of Almighty God upon him if he reveals any secret of the order; and, not only that, but invoking the doom of the traitor, which is death! death!! death!!! How, gentlemen, are you ever to come at such an order as that? Simply in this way—men, in the order, who have become acquainted with its crimes, and who know its purposes, have waked up to the terrible truth that they are felons and murderers, and have stepped forth and said, we will be so no longer; we will do what we can to break up and destroy this foul conspiracy, and make what reparation we can to the world for the part we have taken in it. You have heard, gentlemen, all this testimony, and you are to judge of it and these witnesses in the light of repentant sinners, who are willing to offer themselves as witnesses for the benefit of society. We have used them, gentlemen, and we ask you to scan their testimony and give it its true value.

Next comes Mr. Foster. He has been inside this order; he has ridden on its raids; he has scourged the back of the dark Republican, but he has repented it, and now he comes

to tell the truth. What, gentlemen, does he say? He says the purposes of this order were political, and that they were to be accomplished by intimidation—by whipping and scourging the members of the Radical party; that, in pursuance of this purpose, he went on two raids. On the first raid, he says, we whipped five colored men. On the second, we whipped four. Is there any doubt about this fact? One of the sufferers, Dick Wilson, has been upon the stand. Foster says, twenty of us went on that night and whipped them and almost whipped them to death. What does Dick Wilson say? He says, "they did whip me, they bared my back, and scourged me till I was almost dead."

But does Mr. Foster not agree with and sustain Mr. Gunn? On the other side, does the counsel assail Mr. Foster? Not in a single word. Foster speaks like a man who has passed through a horrible experience, who has suffered in his own conscience, and determined to repair the injury he has done.

Is there any doubt about this, gentlemen? Do the gentlemen on the other side question this testimony? Here is the slayer, and there is the slain. Here is the man who did the deed, and there is the man who suffered. Is the testimony of accomplices to be received? Is what they say not true, not supported by most indubitable proofs? John Caldwell appears next on the stand. What does he say? "I took that Ku Klux oath; I was to be on the side of constitutional liberty, as bequeathed to us by our forefathers, and I was to oppose and reject the principles of the Radical party. I was a member of the Ku Klux Klan." Well, what did Mr. Caldwell do? He says, "I rode on the raid that killed Jim Williams. We met at the Briar Patch; traversed the road; met Robert Hayes Mitchell at the Cross Roads, near Squire Wallace's, where he joined us in disguise, and rode with us on the raid. We hung Jim Williams on a pine tree. It is true I did not go up and see the hanging, but after it was over, I asked Dr. Bratton what they had done with the 'nigger,' and where he was, and he said 'he is in hell, I expect.'" Here you have the con-

spiracy in motion; here you have the victim "hang on a pine tree." Is Mr. Caldwell to be believed? Let us slip over to the other side of the bushes, to the house of Jim Williams. Hear Rose Williams, the widow; she says that "they came to my house that night, they took my husband, Jim Williams out, and the last I heard of him was a struggle as though he was choking. I followed them to the door, and tried to go and beg them not to hurt him, but they drove me back and told me to go to bed with the children; I looked through the crack and saw them retreating to the woods. I never saw Jim alive again. I saw him next morning dead, with a rope around his neck, hanging on a pine tree." Is Mr. Caldwell to be believed? Look at the dead body of Jim Williams! Ask the broken hearted widow, who has tearfully told, in simple language, of the loss of all she held dear! Ask the fatherless children!

Who is our next witness? Elias Ramsay—halting in speech, but honest in manner and matter. He says: "I was at the meeting of the Klan at Sharon Church, York County. I saw this defendant there in the meeting of the Ku Klux Klan. I rode on the raid with him. We met that dark cavalcade near Wallace's, and, together, went to hang Jim Williams. We joined the party and went in together." What does he say they did? He stayed with the horses until the party returned and the order was given to mount, and he heard somebody say: "We have hung Jim Williams." Next, gentlemen, we put upon the stand little Sammy Ferguson, the support of a widowed mother—a lad of sixteen years, taken and initiated that very night. He takes the oath, goes to the Briar Patch, and rides on the raid to murder Jim Williams.

These, gentlemen, are the acts of the Ku Klux Klan. Do they not sustain the declaration of Mr. Gunn? Was it not true that they intended to kill and whip the Radicals, or those who voted the Radical ticket? Neither you nor I, or the world, will ever doubt it to the end of time. Gentlemen, you have listened to the testimony of those who were in the order, participated in its crimes, now listen to the testimony of those that suffered. 1st. Amzi Rainey. He says, substanti-

ally, he was quietly sleeping with his wife at home; his house was surrounded and the doors broken in, and they shouted, "where is the damned nigger?" He fled to the loft, and when his wife said "he was gone," they commenced beating her over the head, telling her that she lied, and that they would kill her for lying. Shortly afterwards they discovered where he was, and he was brought down; and the party who first assaulted his wife returned and beat her again. They then knocked him to the floor, shouting as they did, to kill him. His little daughter rushed from another room, crying, "don't kill my papa," when these villains fired upon her, hitting her in the head. After riddling the house with bullets, they took Amzi Rainey hence into the open air, swearing that they would kill him; and when two or three hundred yards from the house, one of them says, "no let us stop; let us talk to him before we kill him;" and he turned to Rainey and says, "Are you a Radical?" and he says, "yes." "Will you raise your right hand and swear that you will never vote the Radical ticket any more? If so, I will save your life." Rainey replies, "I will do anything to save my life." And he says, "I then and there raised my right hand to Heaven, and swore, against my principle, that I would never vote the Radical ticket any more." Then the commander of this Klan says to me, "come this way," and he took me out of the crowd and said, "run," and he ran. And as he ran, several stones were thrown at him. This is the way, gentlemen, in which this Ku Klux proposes to stand by the Constitution in its original purity, and this is the manner in which they propose to oppose and reject the principles of the Radical party. The constitution of the conspirators, and the conspiracy in motion, are one and harmonious, from beginning to end. Next is Dick Wilson. He says they came to my house and commanded me to make up a light. They then compelled me to go into the open air, and said, "we will make a Democrat of you tonight; pull off your clothing, stretch out!" And he stretched out and they beat him till they were tired, and they asked him, "will you hereafter vote the Democratic ticket?" And

he said, "I will." That, again, is the way constitutional liberty is maintained by this organization. That is the way they oppose the principles of the Radical party. Is there any doubt about this, gentlemen? The man who sits there helped to do it, and those who did it, and those who suffered, all concur. Next comes Gadsden Steele. He is of the colored race, he says, "they came to my house; they knocked at my door; a dozen of them seized me; their hands were all over me; a musket was before me, and a gun was behind me, and a pistol punched my head, broke the skin and caused the blood to flow." They first asked: "Have you a gun?" I told them no. They then, turning to the old white man with whom he lived, say: "What sort of a boy is this?" The reply is: "He is a good sort of a boy." They then ask: "What ticket did he vote?" He says: "I must tell the truth; he voted the Radical ticket." They then shout: "God damn him, we will kill him for that!" Here is the purpose of the Ku Klux Klan; and this is the way they propose to defend constitutional liberty in its purity. They then take him up to No. 6 of the Klan. No. 6 makes him a very low bow, and with his horns hooks him in the breast, and asks: "Where is Jim Williams?" He replies that he does not know exactly where Jim Williams lives. The poor man is frightened almost to death by No. 6. He is then ordered to get on behind and go where Williams lives. He mounts the mule, and they start, but the mule is not able to carry both, when this brother Ku Klux says: "This God damned negro is too heavy." No. 6 answers: "Put him down," and he is put down. Then the Ku Klux says to him: "Don't you vote the Radical ticket any more. We are going to kill Jim Williams, and all you damned niggers who vote that ticket." Does anybody dispute this testimony? Do you doubt Gadsden Steele. Not a word to contradict him—not a suggestion from the distinguished counsel on the other side? What is the object of their marching in darkness? It has been said to you that what was said by any of the conspirators was the language of the defendant here. The language of his associates was his language. Can

there by any doubt as to why they proposed to kill Jim Williams?

Who is the next witness? Hiram Littlejohn. He is a citizen of color. What does he say? They came to my house just before day. They were on their way from Jim Williams', going towards Yorkville. They asked me for my gun. I told them that I had none but a double-barrel shot gun. They took that. Then they asked me what ticket did I vote? I told them I voted the Radical ticket. "Don't you vote it any more, do you hear? We killed Jim Williams tonight, and we intend to rule this country or die." Here, gentlemen, you have the declarations of the Klan while executing its mission on their way to kill Jim Williams, and on their way from the scene of his execution! Is there, I ask, now any doubt about their purpose? Out of their own mouths, gentlemen, they are convicted. But, gentlemen, there is one piece of testimony which, to my mind, is equally significant with the direct testimony of these two men. You will remember that this band, after they hung Jim Williams on the pine tree, called at the house of John Bratton, and, when they had called him out, and he had come to the door, they said to him: "What do you mean by having these guns upon your place?" He says: "I cannot help it. I ought not to be held responsible for what Governor Scott has done." They reply: "We will hold you responsible hereafter." He then says: "I am not a Radical. I did not give them the guns." What made him say that? He knew the purposes of the order, and that their purposes were not only to take the guns, but to punish Radicals. Hence he said, "I have not given them the guns, and I am not a Radical." Here, gentlemen, we have, unquestionably, an unwilling witness, declaring what he knew perfectly well were the purposes of the Ku Klux Klan, and of this body of raiders and murderers of Jim Williams.

Behold, gentlemen, the dark deeds of the Ku Klux Klan! Does not the civilization of the age start back in horror and stand aghast at the sight? Will not the world shudder as it

reads the testimony of this trial, and will it not be said, wherever it is read, that the dark ages have come again, and the crimes of savages even, upon our Western frontier, present no parallel to these?

I have presented to you, as briefly as I could, the evidence upon which we ask a verdict of guilty at your hands. Now, what is the defense set up by the learned counsel for the prisoner? Why, gentlemen of the jury, the most distinguished counsel of the land—both of them ex-Attorney Generals of the United States—who have been at the bar for nearly half a century, and have justly adorned it—the fame of one of them, at least, has become the pride of the American bar. What is the defense which these distinguished men make to this charge against the prisoner? Do they deny, by testimony, the constitution and by-laws of the Ku Klux Klan? Do they attempt to deny that paper is the basis of the organization to which their client belongs? Not at all. They don't assail that constitution; they don't deny the interpretation put upon it; they do not deny its language; don't attempt to excuse its operations. They don't deny the evidence of Mr. Gunthorpe or Foster, or Rainey or Kirkpatrick or Ferguson. Do they attempt to impeach the testimony of Dick Wilson, Gadsden Steele, Hiram Littlejohn? Do they attempt to deny the crimes committed by this terrible Klan, committed by the associates of their client? Not at all; not one word of testimony or argument, nor one word of excuse. What, then, is the defense? What do they say? They say there was a state of terror and fear in York County, on account of the three militia companies—on account of the burnings—on account of the Union League—and on account of the threats of "Jim Williams." But, gentlemen, does this explanation excuse the Ku Klux Klan? Admitting, for the sake of argument—which we deny—that all this is true, do they show, or attempt to show, one tittle of evidence that this organization was the result or consequence of that fear? Is there anybody here that says that but the distinguished counsel, and they only by way of argument? Do they con-

nect their client with that fear in any way? Do they show that it was an organization for protection—for protection against threatened danger? do they pretend that? Why, gentlemen, read the constitution and by-laws of the Klan, and see if it was an organization got up to defend their wives and families against danger. There is no such thing in it. The leading features of that instrument I have discussed. They are political, and for political ends; they are for the purpose of defending constitutional liberty, as bequeathed to us by our forefathers, and to reject the principles of the Radical party. Is that protection? Do they use such language and mean protection? Does it appear from the evidence that there was a fear of Jim Williams, or fear of the Union League, or fires which occurred at midnight in York County, before or after the organization of the Ku Klux Klan? But admitting all they claim in that regard, and the organization of the Ku Klux Klan is still unexplained. It is still the terrible dark and devilish conspiracy. But what they claim, gentlemen, we will show, by the testimony, is not true. First, as to the militia companies; when were they organized? In 1870. When was the Ku Klux Klan in York County organized? In 1868, two years before. Can anybody say, is there any gentleman so learned or so eloquent as to endeavor to persuade you to believe that the militia companies organized in 1870 created the Ku Klux Klan of 1868? Why, gentlemen, it is too absurd to talk about. They could not have been the cause, since they were organized after the Ku Klux Klan was organized. Now, as to the Union League. The gentlemen on the other side have not attempted to assail the character of the Union League in argument or in testimony. That it was a proper organization is not denied. That its objects were carried on in a lawful manner there is no denial. That it was a bad organization in itself, that its principles were bad, nobody claims. No one claims that it did a single act, during its whole history, of which anybody could justly complain. Are we to be told, are we to be asked to believe, that the Union League,

a perfectly harmless society, was the cause of the organization of the Ku Klux Klan? Why, if it was, tell us what the Union League has done. Tell us how it has organized the Ku Klux Klan. Gentlemen, if they could have impeached the character of the Union League, would they not have done it? Are the distinguished counsel on the other side ignorant of what they could do, or ought to do, if the Klan had its birth in such a cause? Certainly they are not ignorant; and the counsel who last spoke said, "I have not a word to say against the Union League;" and this is the end of that argument. And now, as to fires in York County, said to be incendiary. That took place two years after the organization of the Ku Klux Klan, and months after they had been murdering and whipping the colored citizens of York County. Will they attempt to say that the Ku Klux Klan had its birth in these fires in York County? Why, gentlemen, the same answer can be given to this as was given to the other—the organization of the militia companies. The organization of the Klan took place two years prior to any burning, and the raiding of the Klan was two or three months before the burnings of which they complain in 1871.

So, gentlemen, this defense, this attempt at palliation, or this attempt at explanation, this attempted excuse or the deeds of the Ku Klux Klan, is blown to atoms. It has nothing more in it than the breath of the distinguished counsel who suggested it. But what is the testimony on that point? Mr. Lowery, a witness called on the part of the defense, tells us, the fires took place long after the raiding of the Ku Klux Klan. The fires took place in January and February. Poor Tom Roundtree, colored, was killed by the Klan on the second night in December previous to that, and all that part of the country was then being raided, night after night, by the Klan. The fires took place a month or two after. Is this, then, any defense of the Klan in York County? Can the distinguished counsel say to the world they organized for self-protection (!) against the fires that lighted up the horizon in York County, in January and Feb-

ruary, when the fact that these murders and raids had already driven the colored people to their graves, or to the thickets for concealment, at night, long before they occurred? Gentlemen, I feel that I would be wasting your time if I detained you to show you that the excuse given here by the counsel on the other side, and given up in York County itself, had no foundation in truth or in fact. Gentlemen, there is not a witness, either for the prosecution or the defense, that locates the body of these fires till months after these outrages had been perpetrated. The only burning before, to which a suspicion has attached, has been proven to have been the work of white men, and not of the colored men. The man whose building was burned, Dr. Allison, says he was satisfied, from the tracks left there by the incendiaries, that it was a white man that did it, and not a colored one; so that not a suspicion, much less a fact, of burnings is fastened upon any colored man in York County, or upon anybody, till months after these raidings and murders were committed.

But, gentlemen, we come now to their last defense. They say that the raid upon, and the murder of, Jim Williams are to be attributed to his own threats to "kill from the cradle to the grave." Gentlemen, let us examine this last stronghold. It is said Jim Williams made threats. Jim Williams is dead. His voice is hushed forever, and, though evil men assail and revile his memory, he will not reply again. We must depend, for his vindication, on his conduct in life, and on the testimony of those few faithful friends who stood by and appreciated him in his hour of peril and of death. I say to you, gentlemen, and I appeal to you on the testimony only, there is little to censure in the language of Jim Williams, when you remember when and where he said it, and when you understand it as he meant it. I have once felt hurt upon this trial. It was when Mr. Stanbery said, in your hearing, "Had I lived in York County I would have joined the first squad, and gone to arrest Jim Williams." Gentlemen, in the light of the testi-

mony, which has not been contradicted, how could he say that? I pity the head, if not the heart, of this gentleman. Gentlemen, that was as gratuitous a remark as one other remark made by that distinguished counsel, which was, "I am not mixed up with your local quarrels in South Carolina. I am not mixed with your politics. I came from a distance; but I tell you, colored men of South Carolina, if you attempt to make a step in advance of the white race, your doom is sealed!" Why did this distinguished counsel make such a remark? Is there a pretense in this case—is there a pretense in South Carolina—that the colored race have attempted to do this? I tell you no, gentlemen, the colored race of South Carolina is struggling to elevate itself—is struggling to exercise the rights of American citizens; the people of that race are struggling to protect themselves and become what the Constitution says they shall be—clothed in all the rights of American citizens. Gentlemen, I do not here encourage, and I have never encouraged colored men to aspire to, or claim, anything more than is conceded to white men; but to all political rights and rights of property they are fully entitled. The laws of this State are equal and just. No political party in South Carolina attempts to impeach the Constitution which the colored people of this State have made. But, gentlemen, that distinguished advocate comes from a State which has not advanced as far as South Carolina. He comes from a State that does not allow a colored man to sit upon a jury, or testify upon the stand; hence, we may well excuse him for some little aberration of mind. His is the State of Kentucky. But all such remarks have a purpose. What that purpose is, I leave you and the country to judge. What I do say to you is, that, whether wise or unwise, whether just or unjust, the colored man in South Carolina is raised by the fundamental law of this State, and that law is supported by the Constitution of the United States, and by the conscience of the great American people, that the colored man shall be a citizen, and he shall be protected in all the rights of an American freeman.

Now, as to the threats of Jim Williams. Who says he made threats? Mr. White says—he is a member of the Legislature from York County—I have known Jim Williams for eighteen years, and I have known him to be a peaceable, quiet and unoffending citizen, and I never heard him make a threat. I never heard of his making a threat until after they had hung him. He was incapable of “killing from the cradle up,” unless he had a terrible provocation. What does Mr. O’Connell, of the House of Representatives, who was driven from York County by the Ku Klux Klan, and did not dare to go back there until our distinguished friend here, an efficient officer of the United States army, Major Merrill, made it possible to live there, say? He says: “I know the reputation of Jim Williams, and I know none who stand higher. I never heard of his making threats (and I knew him well), until after he was dead. Andy Timms says: I was the clerk of his company, and was his bosom friend. I helped organize the company. I was with him day and night, and I never heard him make a threat—I never heard of his having made a threat until after they had hung him. Now, gentlemen, let us examine the testimony of their own witnesses. Mr. Bratton, a witness called for the defense, says: “I heard him make threats,” and you will remember that I asked him in what connection he made threats, and he replied, that “it was in reference to the raids of the Ku Klux Klan—that if the Ku Klux Klan came to this neighborhood, and raided upon the people here, as they had done in other portions of the County, he said, I will take my company, and I will fight them, and if worst comes to worst, I will kill from the cradle up!” Gentlemen, that is the light in which he made those threats. He says, substantially: “If I am to be murdered, as Tom Roundtree was—if the colored people—my fellow-citizens—are to be killed and whipped by the Ku Klux Klan, I propose to fight myself and carry on war.” Another of the defendant’s witnesses in the same connection, testified that when he uttered those threats he said this: “I think the best way to

do in this fuss is that the white and colored people, if they must fight, shall go to the old field and fight it out like men." This, then, gentlemen, was what Jim Williams meant. Does anybody blame him for it? Does the honest man live who can stand up and say that Jim Williams, in the light of the murders about him of his race, was not justified in making threats? or, at least, if not justified, excusable? I do not, gentlemen, defend threats of violence; we have had too much of it in this country, and it is too common in our midst. The people ought to learn that in a tribunal of justice are they to seek redress for all their woes. But, gentlemen, the courts, the tribunals of York County, were deaf, paralyzed, in the presence of this all-pervading organization of the Ku Klux Klan, and Jim Williams felt, as he had a right to feel, that his own life, and the life of his fellow-citizens of African descent, depended upon their own strong right arms. It was that right arm that he invoked on these occasions when he made these threats, if threats they can be called. Is it possible for you to believe, from all the testimony in the case, that he referred to anything else than the means to save his own life? The Ku Klux Klan was raiding, whipping and murdering his race, and the only wonder to me is—and I say it emphatically, to the people of York County—the only wonder is, that your houses are not all burned! The only wonder is, that many of you were not assassinated at midnight! The only wonder is, that many of you now still live! I desire to call attention to the language of the distinguished counsel on the other side, where he says: "Self-defense, self-protection is written upon the heart of the infant when born into the world." I can only say, gentlemen, that, in my judgment, it was not written very legibly upon the hearts of the colored people of York County. If it had been, the worst forms of civil war would long ago have been inaugurated there, and the white people would have reason to say the colored people intended to kill from the cradle to the grave! But, gentlemen, the member from that county in the House

of Representatives of this State, tells us that that fear was all a pretense; that it had no real foundation. And now, gentlemen, let us see if he is sustained by the testimony. Gentlemen, the history of the war, is not forgotten. Did the white people of South Carolina fear the colored race during that long and terrible war? That war, at least during half of its continuance, was waged with the express understanding, on the part of the North, that, if successful, the slaves were to be set free. But, notwithstanding this temptation to disloyalty, did the Confederate soldier fear to leave his wife and family in the hands of his slaves at home? Did he fear that they would rise and kill from the cradle to the grave? Did he not go with the armies of the Confederacy far to the front to fight the army of the Union, and leave his wife and children, helpless ones, in the hands of his slaves? Since the close of the war, have they had occasion to fear the rising of the colored people. When the bonds of slavery were broken, and when the slave was told that he was free, did he seek to revenge himself upon the white race that had bound him for two hundred years in bondage? Is there any instance, in the whole South, where we have seen anything like revenge in the conduct of the colored race? I tell you, gentlemen, no! The testimony of all the white people of the South can be invoked, with safety, upon that point. No public speakers, even in the Democratic ranks, representing, if you please, the Ku Klux Klan, dare, in public, charge that the colored people of South Carolina—once slaves, now free—have attempted to retaliate upon their old masters. No, gentlemen, they have been a patient, long suffering, quiet and peaceable race. They have only sought to take and enjoy the blessings of freedom secured to them under the Constitution. Have they committed any outrages, or made threats before 1868, before the organization of this Ku Klux Klan? Mr. Gunthorpe says I didn't see any occasion to fear. I didn't know why the Klan was organized in 1868, but I thought if there was any danger I would join it, and have the benefit of it; but, when I came

inside the Klan, I found it was not for self-protection at all. There was no such purpose in it. What was it? It was to go and elbow voters from the polls. Still later, has there been anything in the conduct of the colored people of York County to cause this state of terror and alarm? There is not one word of proof to show it, except that they had reason to expect retaliation for wrongs perpetrated upon the colored race! Gentlemen of the jury, we can only say that the testimony of some of the witnesses for the defense cannot be true. The white people of York County would not so testify if upon the stand. We can only say of the testimony of three or four witnesses that have been put upon the stand for the defense, that the history of the colored race during and since the war contradicts them. The organization of the three militia companies in York County is not enough to justify the fears and the alarms of which they testify. What does Mr. Albertus Hope say: "I was in the Klan, which we organized for protection—to protect my house and family, and the colored people, upon my place, against the white people raiding round"—not the colored people that were raiding round! Mr. Hope is the best specimen of the Ku Klux that we have met in the history of this trial. He says he felt it necessary to organize a Klan to protect himself and his laborers against the white people that were raiding around. Gentlemen, here in the presence of all this testimony, in the light of history, we say to you, that this terror is all a pretense; the fear of the colored people was not justified, and it did not, in fact, exist. But, gentlemen, I hasten to close this argument, I do not care to say a word upon the technical points raised against this indictment and the proof—the Court will tell you that this conspiracy to deprive the colored citizens of York County of the right and privilege of voting, the admonition that they gave to every colored man as they whipped him—never vote the Radical ticket again—includes the election of 1872. I will not waste any words upon that point, because, gentlemen, common sense, which I know you possess, and the law, that

I know you will receive from the Court, furnish a complete answer. The precedent, if the Court please, which the distinguished counsel cited, does not apply to this case: "Proof of a general conspiracy to cheat, as is said, does not prove a conspiracy to cheat a particular person." That is not this case; that is not this indictment. This indictment charges a general conspiracy to deprive divers colored people of the right to vote in the election to take place in 1872, and the proof is that a conspiracy existed to prevent voting at all in the future. Does not that cover the election of 1872?

As to the second count in the indictment, I need say but a word. You have heard of that dark cavalcade of disguised men on their way to kill Jim Williams. They said, we are going for his arms, and we are going to kill him, and every damned nigger who voted the Radical ticket!

Gentlemen of the jury, this is no common cause. Your verdict will mark an era in the history of the administration of justice in South Carolina. The smoke of battle and the sound of arms of the great rebellion have just passed away. With the close of that great tragedy humanity has swept onward. The arm of the nation has been stretched out to protect the as yet ignorant but enfranchised freedmen. The bonds of the slave have been broken, and the voice of the American people is (and the people of South Carolina, and the people of the South, must hear it, listen, and be governed by it), that the rights of the newly enfranchised citizens shall be protected. We have discovered, gentlemen, a fearful conspiracy against these rights in an armed, equipped organization, composed, alas, gentlemen, of many soldiers in the late war, who promised to lay down their arms, retire to their homes, and behave like good citizens. This organization is found bearing arms, marching in squadrons at night, and for what? To defeat the very principles achieved in that contest by the government of the United States. I say to them—I say to every individual in this armed organization—in the name of God, disband! Go to your homes, meet no more; because the up-

lifted arm of this nation, otherwise, will crush you, will grind you to powder! The late war left you poor, in poverty and distress; if the arm of the American people has again to be raised to put down this organization, I fear it will make your homes desolate and your fields a wilderness. One thing, gentlemen, is certain; I hear it in the voice of the President, in the language of the new Attorney General, and I heard it in the language of the one about retiring, and it throbs in the heart of the American people; it is that this organization, to defeat the rights of our colored fellow-citizens, must and shall be put down. Gentlemen, I am here, as the representative of the Government, for that purpose. I tell you, and I tell the people of South Carolina, that if this thing is not put down, woe, woe, woe unto them. Gentlemen, you have heard the case, you have listened patiently to the evidence, and I now look, with confidence, for a verdict at your hands.

THE CHARGE OF THE COURT.

JUDGE BOND. Gentlemen of the Jury: You have listened with patience to the recital of the evidence in this cause, and without commenting upon that, the Court proposes to state to you the law applicable to the evidence, which must guide you in making up your verdict. The indictment, gentlemen, is for a conspiracy, which is an agreement by two or more persons to do an unlawful thing, or to do a lawful thing by unlawful means. The thing to be punished is the unlawful conspiracy, and not the particular acts done in pursuance of it. The conspiracy is a crime, if nothing be done in pursuance of it.

The indictment, gentlemen, contains two counts. The first charges the defendant and others, jointly indicted with him, with having conspired to violate the first section of the Act of May 31, 1870, by unlawfully hindering, preventing and restraining a certain class of persons therein named from the future exercise of the right to vote at an election to take

place in October, 1872, on account of their race, color, or previous condition of servitude.

And the second count charges that he, with others, did conspire to injure, because of his color, James Williams, because he had exercised the right to vote previously. It is to these counts that you are to refer the evidence and to apply the law which the counts give you. If you find from the evidence that there was no such conspiracy as that described in the first count, or if there was a conspiracy, the object of it and its purpose were different from that set forth in the count, and that the object and purpose set forth in the count was not one of its purposes, and objects, then the party charged is not guilty under the first count, though he may have been engaged in the conspiracy. But it is not necessary, if the jury find there was a conspiracy, and that the party was engaged in it, that they should find its purpose to have been single. If they find that one of its purposes was that set forth in the first count, to prevent citizens from the exercise of the right to vote because of their color, it is sufficient. An association, having such a purpose, is an unlawful conspiracy, and a party engaged in it may be punished under the first count.

Each member of such an association is a conspirator, and is responsible, personally, for every act of the conspiracy and for the acts of each member thereof, done by common consent, in furtherance of its illegal purposes, and also for such acts done in furtherance of the conspiracy not consented to beforehand, if assented to subsequently to their perpetration, and that whether the party charged was himself actually present or not when such act was done. And if the jury believe, from the evidence, that the various Klans spoken of by the witnesses were but parts of one general conspiracy, this rule applies not only to the members of the same Klan, but to the acts and conduct of the members of the different Klans done in furtherance of the conspiracy. And it makes no difference in guilt if you find from the evidence that the motive of a party who joined the conspiracy

was not illegal when he did join it, if you also find that, after he became a member, he was aware of the fact, or had reason to know, that the true object of the conspiracy was to prevent or hinder the free exercise of the elective franchise by intimidation or violence, as aforesaid, on account of color, and that he still remained a member and participated in its meetings, and that, though you may also find he never himself actually used the force, intimidation or violence, and was not present when it was used.

And now, if the jury find, from the evidence, that the party charged did so conspire to prevent the citizens described from exercising their right to vote, on account of their color, at a future election, specified to be the election to take place on the third Wednesday of October, 1872, then the party charged is guilty under the first count of the indictment.

And if the jury find, from the evidence, that they did so conspire, and for the same reason, to injure and oppress, on account of his color, one Jim Rainey, *alias* Jim Williams, because he had antecedently, on the third Wednesday of October, 1870, exercised his right to vote, then he is guilty on the second count.

But if the jury find, from the evidence, that no such conspiracy existed, or that, if it existed, the intimidation or injury of voters, because of their exercise of the suffrage, or to prevent its exercise, formed no part of its purpose, or that, if that were its purpose, the defendant was not engaged in it, then the defendant is not guilty.

But the jury is not bound to believe the sole purpose of the conspiracy to be that set out in the first count; if they find it to be one of the purposes, it is sufficient. Nor, if they find that the beatings and intimidation spoken of by the witnesses took place or existed, are the jury bound to believe that the reasons given at the time by the conspirators, if they find reasons were given, were the true reasons for such conduct; but the jury may determine, from all the evidence in the cause, what the true reasons were for such violence.

If the jury find, from the evidence, as we said before, that the conspiracy set forth in the first and second counts in the indictment existed, and the defendant engaged in it there, he is guilty on both counts. If there existed no such conspiracy at the time set out in the indictment, or, if existing, it had another object which did not include that set out in the indictment; or, if existing, and having the illegal purpose, the defendant took no part in it, then he is not guilty.

The jury are at liberty to find one of three verdicts: They may find the party guilty generally, or not guilty generally, or they may find him guilty on one count, and not guilty on the other.

Take the case.

THE VERDICT.

The *Jury* retired, and, on their return, rendered the verdict: "Guilty on the second count; not guilty on the first."

Mr. Stanbery entered a motion for a new trial.

December 28.

THE SENTENCE.

JUDGE BOND. The Court will overrule the motion for a new trial and in arrest of judgment.

JUDGE BOND. Prisoner, what have you to say for yourself why the Court should be lenient towards you?

The *Prisoner*. Well, sir, I don't know what I ought to say. I might say right smart, and then it mightn't be much benefit. I don't know whether I can say anything to be of any benefit. I never was arrested. I went up to York and gave myself up to Major Merrill, and told him all I knew, except some things he didn't ask me and didn't give me time to tell him, but sent me to jail. I came down here with the intention of pleading guilty, and my lawyer kept me from it, and said not to plead guilty; said it was best for me not to do it. That was the reason I didn't plead guilty. I wasn't guilty of the charge, although I was guilty of being on the raid; but I didn't do anything. That was proven here, that I didn't do anything to anyone that night. I joined the order in 1868, and I never had been on a raid in my life, and didn't know who else did belong, until the night that we went to McConnellsville. I don't think there was any raiding done, to my knowledge, after I joined, until this last year; a while before this Christmas a year ago, I think, was the

first. I didn't know a thing about it until Sunday evening. The man was hung on Monday, and I never heard his name before in my life; I didn't know anything about it at all. I suppose there was men that did know the negro; I didn't, though. Who determined the fact that a negro should have a whipping? I suppose it was the Klan. There was a committee. I am a farmer, have been, the last two years.

JUDGE BRYAN. Mr. Mitchell, it has been your unhappiness to have been connected with a great crime; and if the Court could believe that you were a party to that crime—that you had suspected the terrible deed that was to be done—and had any intimation that you had countenanced it, they would exhaust the full penalty of the law, and then consider that you had been very mercifully dealt with. But you have come in and confessed; your manner has impressed the Court; and, although you were so misguided as to join a body of men to punish people, and punish them without responsibility to the law, yet we feel at liberty to believe that you have dealt candidly with the Court, and that you have told the truth. It is upon that conviction alone, that the Court finds its vindication for accepting your declarations and believing that you were in no way a party to the murder. The sentence of the Court is, that you be imprisoned eighteen months and fined one hundred dollars.

THE TRIAL OF JOHN W. MITCHELL AND THOMAS B. WHITESIDES FOR CON- SPIRACY, COLUMBIA, SOUTH CAROLINA, 1871.

THE NARRATIVE.

John W. Mitchell was chief of a Klan and one of the leaders of it in his county. It was proved that he and his Klan went on several raids, and particularly upon a raid upon Charles Leach, a colored man, a resident of York County, and entitled to vote there; that they whipped him severely because he had been a Radical and voted the Radical ticket at the last election and to prevent his voting it thereafter. A great number of outrages were shown to have been committed in York County, in pursuance of this general conspiracy, by the conspirators, of which Mitchell was one; that they whipped, shot at and maltreated numerous colored persons who were entitled to vote. He was found guilty without much delay and given a heavy fine and a long term in prison. The other accused, Dr. Whitesides, was also found guilty, but being less prominent his sentence was less severe.

THE TRIAL.

*In the United States Circuit Court, Columbia, South Carolina,
December, 1871.*

HON. HUGH L. BOND, }
HON. GEORGE S. BRYAN, } *Judges.*

December 19.

John W. Mitchell and Thomas B. Whitesides had been indicted by the grand jury for conspiracy. The first count of the indictment charged a general conspiracy against the exercise of suffrage; the second, third and fourth counts

charged a special conspiracy against one Charles Leach to prevent his free exercise of the right to vote at an election.

D. T. Corbin, U. S. Dist. Atty., and *D. H. Chamberlain*, for the United States.

W. B. Wilson and *C. D. Melton*,¹ for the Prisoners.

The Prisoners pleaded *not guilty*.

Mr. Corbin. Gentlemen of the jury: We propose in the first place to establish the fact of the existence of a conspiracy in York County against the rights of the colored people of that County, and the colored people generally, to exercise the right of voting, and that the object of that conspiracy was to prevent, by unlawful means, threats, force and violence, the colored people, who are entitled to that privilege, from voting. We shall show to you that this conspiracy was thoroughly organized, and armed, and equipped, and that they were armed with pistols and guns, and that their uniform was a mask and gown called a Ku Klux gown; that they carried out their purposes in the night time; that they intended to intimidate, control and prevent from voting the colored voters of that County by whipping them at night, and by concealing themselves, and escaping under cover of the darkness of the night. This is the general conspiracy. We shall show you that these defendants were members of that conspiracy. We shall show you that, in pursuance of the general design of that conspiracy, both of the defendants, with others, went upon several raids, and particularly upon a raid upon Charles Leach, a colored man, of York County, a resident, and entitled to vote in that County; that they whipped him severely, and whipped him because he had been a Radical, and voted the Radical ticket heretofore, and to prevent his voting it hereafter. We shall show you, gentlemen, in this case,

¹ MELTON, CYRUS DAVIS. (1819-1875.) Born Yorkville, S. C. Graduated South Carolina College, 1843. Admitted to bar (Chester-ville), 1845; practiced there until 1868 when he removed to Columbia where he practiced until his death. Member General Assembly, 1850-1854. Solicitor Northern Circuit, 1855-1867. Professor of law, University of South Carolina, 1869-1875.

a great number of outrages committed in York County, in pursuance of this general conspiracy, and by these conspirators. .

To this end, gentlemen of the jury, the testimony of the prosecution will be directed.

THE WITNESSES FOR THE PROSECUTION.

Osmond Gunthorpe. Am a resident of York county; was initiated into the Ku Klux in 1868 by Dr. Avery.

Mr. Corbin, the District Attorney here read the constitution of the Ku Klux Klan. See *ante*, page 615.

Gunthorpe. There are parts of it that I recollect, and some that I do not. When I was requested to go into it, I understood it to be an organization for self-protection, but after I had been in it for some time I found it to be a political organization in the interest of the Democratic party. They intended to crowd the ballot boxes at elections, and to prevent all the members of the Radical party from voting that they could. When I found that this was its character I severed my connection with the organization.

Cross-examined. Do not know of voters being interfered with. The white population is in the majority at this precinct. There was some talk of trouble with the negroes. I did not feel particularly uneasy. The people of York county went generally into the war. At the election of 1870 there was a large, full vote.

Lawson Davis. Joined an organization in January, 1871; it was then known as the "Invisible Empire of the South." Was initiated at my own house by Wesley Smith, a brother of mine, J. F. Fox and Marshall Davis.

Mr. Corbin here read the oath. *Davis.* That is about the oath. I think it embodies the principles to which I swore. I attended one meeting of the Ku Klux. I attended one. The Klan was organized by electing Charles Byers Chief of the Klan, and appointing myself Secretary; a younger brother of mine was appointed Monarch. Those present at the meeting I attended told me the parties against whom charges had been preferred must be visited and asked to change their opinion, and to vote the Democratic ticket. In case they did not do it they were to be visited again and corrected by members of the Klan, and, if they refused, to be whipped; and, if they again refused, they were required to leave the county; in case they did not comply, they were to be killed. Never saw any of it carried into operation, but Wesley Smith told me that he, in company with three other men, had killed Charles Good, a colored man. He was a blacksmith. He told me that he had been visited and whipped by the Klan because he was a Republican and would not change his opinions, but would vote the ticket again. I told him he had better not repeat that. About four weeks after they returned and killed him. He was rather a prominent negro in the community. Charley Byers told me about whipping a colored man near where I lived, Jerry Adams.

Cross-examined. There were reports in the county, at that time, that there was some danger from the colored armed militia, and the order it was to protect ourselves in case of any demonstration by this militia. Reports were current about fires in the county; more in the northern portion than in ours. Never met with Dr. Whitesides in any meeting of the Klan.

Kirkland L. Gunn. Reside in York county. In January, 1871, became a member of the Ku Klux at Wesley Smith's. The constitution and by-laws were read to me. The oath, in substance, was not to reveal the secrets of the Klan; that the purpose of the Klan was to put down Radicalism, and rule the negro suffrage. (A paper was here handed the witness.) Yes, sir; the obligation is the same (the witness was here requested to read the paper through), it is the same that was read to me. (The constitution and by-laws of the Ku Klux Klan were read by the Attorney General in open court.) The object of the order as I understood it was to put down the Radical party and rule negro suffrage by whipping negroes and intimidating them and keeping them from voting, and to kill all such white men as took Radical offices, and who then occupied offices, the operations to be carried on in the night. Each man was to be numbered. Sometimes they would begin with No. 1, and sometimes they would begin with five hundred; they would begin with any number they chose, and then run on. The object of that was to keep from calling names. The Chief

was John Mitchell, this man here, J. W. Mitchell. It was called Mitchell's Klan. Was told by Wallace, there was to be a meeting at Barkley's Mill, for the purpose of raiding Bill Kell, and to kill him for being President of the Union League. Pursuant to that notice, I met there that person, J. W. Mitchell, Whiley, Ed. Leech, Arney Nell, Chas. W. Foster, Wesley Smith, Joe Smith, Thomas McAllen, and a good many others I knew, but cannot remember their names now. Should say from thirty to thirty-five persons. They were all mounted. Some were disguised and some were not. It did not come off because Mr. Hugh Kell was there. It was thought he was sent there to let it be known if Kell was killed—that he might be a witness. There were rough words between Mitchell and Kell. Mr. Mitchell ordered the Klan to go home and wait till he ordered them out again; was ordered to go on one raid on Jenny Good; did not go as I had no saddle to ride. Recognized a person by the name of Squire Sam Brown as a Ku Klux. He and Wesley Smith had been engaged in conversation. Brown gave him the sign. I heard him say, "I can go and take my Klan, and whip more damn niggers than any other Klan in York county" The signs and passwords of the order, and how they use them on occasions were like this: One was passing the right hand over right ear; this was answered by passing the left hand over the left ear; the next sign was putting the right hand in the pocket of the pants, leaving the thumb to be seen; if you wished to find out if a person

belonged to the organization he returned it with his left hand in the same way; the next sign was putting the heel of the right foot in the hollow of the left; this was answered by putting the left heel in the hollow of the right foot. If you met a man or a party you would say, "S-a-y, who are you?" This was answered by "N-o-t-h-i-n-g," without pronouncing the word. They had a grip. In grasping the hand the little finger would go between the fourth and little finger of the hand you grasped, and the forefinger would stretch up and touch the wrist. Have frequently exchanged that grip.

Cross-examined. Have no knowledge of Dr. Thomas Whitesides being a member of this order. He said something about the Ku Klux; said it was the most damnable curse, or the most damnable affair in the country; I then gave him the sign, but he did not respond.

Charles W. Foster. Have resided ever since the war in York county; was in the Confederate service; know Mr. Whitesides and Mr. Mitchell; was a member of the Ku Klux; joined it near Mt. Vernon Church. The oath I took, the substance of it, was that we should protect the women and children, and put down Radicalism; whip and kill out those leading characters—white and black—that belonged to the Radical party, if there was any resistance. Also that no colored man should be admitted in the organization. I was on a raid first on the night of 9th of January. There were Captain John W. Mitchell, Joseph Mitchell, Milton Watson, William Good, Robert McCreight, Charles By-

ers, John Davis, T. B. Whitesides, and Pinckney Webber, leading Parker's Klan, from the other side of the river. That is the man, sir. Dr. T. B. Whitesides was present that night. I left Milton Watson's house with him and Milton Watson, and went on before them. We went first to Rowland Thompson's place and Webber he ran into Pressly Holmes' there, and kicked down the door, jerked him out of bed, took him up to the old store, made him strip off his shirt, and whipped him pretty bad, and made him give the Union League signs; told him not to vote the Radical ticket any more; to let politics alone; the white men always have ruled this country, and they intend to do it. Went, then, to Widow Thompson's place, took out a boy named Jerry Thompson and whipped him; they also broke his gun. We went, then, to Mr. Moore's plantation and took out Charley Good; whipped him; saw one man with a stick nearly as large as my wrist, and some were kicking and some whipping, and they came very near killing him; told him to let politics alone; that they understood he was an officer in the Union League. I heard afterwards he was killed. Then there was a colored boy named John Adams ran out, and they shot at him. They went up then to Madison Smart's, and took Charles Leach out, a colored man, and gave him a dressing. Told him he was a member of the League, and must let it alone. I heard one man ask him, says he, "had you rather take a hundred lashes or be killed?" and he said he

would rather five hundred lashes. They went then and whipped a boy called Amos Howell.

On the second raid we met below Dr. Whitesides. First went to Adolphus Moore's and they whipped him. Then down to Mrs. Stinson's; and they whipped this boy, Sam Moss, because they had heard he had made some threats. Went, then, to the Nangle place. They whipped a couple there—one Aleck Leach, and one Henry Moss. They went to Aleck's house first. He was crippled in one foot, and they made him walk up to Henry Moss' house, and got them both, and took them up to the old field, and whipped them pretty severe, with hickories and cowhides. I suppose one hundred lashes. Aleck Leach has since been killed, I heard. They told him not to vote the Radical ticket any more. Went on then to Wilson's, a colored man. They carried him out in the yard and whipped him a little, and made him give the League signs. Told him he must leave the League meetings alone and not vote the Radical ticket any more. Have seen Dr. Whitesides with the Klan only the one time; I and him had a conversation after that, and he said it was one of the most outrageous things in the country—this Ku Klux Klan—it was running all his hands off, and he would be obliged to suffer if they didn't stop it. He said he was opposed to it. He didn't have much to say about the raid he was at; it was his first raid, and he was like a good many others, disgusted with it.

Mr. Wilson. Did you ever state, while in the prison, in the presence of several of the

prisoners (whom I will name), that you were satisfied that you were mistaken in including Dr. Whitesides' name among those that went on the raid that night, and that you intended to go to Col. Merrill and correct the mistake? I did not, sir. Did you, when Dr. Whitesides called to you to go and fix that thing—did you say, in the presence of John Miller and of W. C. Whitesides, or in their hearing, "I will go at once and correct it?" Yes, sir; but you understand my meaning about this.

Cross-examined. This raid upon Charles Leach occurred the 9th of January. Am not certain of the night when this raid was on Charles Leach. I have only a boy's word of it that was whipped.

Henry Latham. The Ku Klux came to my place last winter. When I heard them, knew I would catch it; wasn't able to run and I went and got behind a tree. They beat me with poles six or seven times apiece; five of them hit me, but there was seven in the crowd; they asked me if I would ever vote another Radical ticket, and I told them no, sir, if that was the way they did, I wouldn't ever no more; they asked me if I was a League man; "Well show me a League sign, God damn you;" I caught myself right here (the left lapel of the coat). Mr. Kell, he was a Radical man; he put us all into the League; and they said, "God damn you, what did you join it for?" I said I didn't know there was any harm in it. "Well, God damn him, give him hell;" and then they begun.

Jerry Clowney. The Ku Klux Klan came to my house on 25th

of January, at night. Some one run the muzzle of his gun through the boards and says, damned rascal you." Says I, —says another, "if you see him, shoot him down." Oh, no, I says, don't shoot me. "Well, then, open the door, God damned quick." I opened the door. Here come in the old devil, shaking his horns, and walked up to me. "God damn your soul; you have got a gun here—you damned rascal yau." Says I, yes, sir. "Where is your gun?" Says I, there it is on the wall. Two jumped and grabbed the gun at once, and carried it out of the door. The captain said, "Now, God damn your soul, I want you to tell me, you God damned rascal, what is you doing with a gun, here." I wasn't doing much with it. "What little was you doing with it, you damned rascal?" Says I, I belong to the militia, and I have been mustering a little and drilling. "Well, God d—n your soul, I intend to drill you tonight," and he hit me; he opened my skull there pretty wide; the blood run in a stream like you stick a hog. He went out after he struck me that first lick. I was standing holding my head, the blood running on the floor, and a man came to the door—"Why, God d—n him, we'll have to hang him." Says I, no, please don't hang me. They didn't give me time to walk; just chucked me out of the door. The captain says, "God d—n you; I will show you about drilling, you d—d son of a bitch." Then they circled around, with me in the middle, and whipped me, and I was a jumping and prancing and

begging. Then they told me to work and make my living honest, and the Ku Klux will never trouble you no more. I voted every time there has been an election; the Republican ticket.

Harriet Simril. My husband is Sam Simmons; the Ku Klux visited our house along in the spring. The first time they came my old man was at home; they hallooed out, "Open the door," and he got up and opened the door; they took my old man out and wanted him to join the Democratic ticket; and, after that, they went a piece above the house, and hit him about five cuts with the cowhide. He told them he would rather quit all politics, if that was the way they was going to do him. They came back, after the first time, on Sunday night, after my old man again, and this second time the crowd was bigger. I told them I didn't know where my old man had gone. Well, they were spitting in my face, and throwing dirt in my eyes; and, when they made me blind, they bursted open my cupboard; they eat all my pies up, and then took two pieces of meat; told me all they wanted was my old man to join the Democratic ticket; if he joined the Democratic ticket, they would have no more to do with him; and after they had got me out of doors, they dragged me into the big road, and they ravished me out there. They didn't come any more, at all; the house was burned the next morning when I went to it.

Shaffer Bewens. Joined the Ku Klux Klan in 1867; have been on raids with them. The first raid was on 2d of December. Ned Turner came over to

the shop where I was at work and told me that they was going to make a raid on Roundtree. Met the crowd out there; I asked them what they was going to do with the nigger? They said they was going to kill him; told them I didn't think it would be well to kill him; thought it would be best to go and talk to him or whip him; they swore they was going to kill him. They went and surrounded the house, and fired about fifty or seventy-five guns into the cracks and windows of the house. Roundtree run to the edge of the loft and shot down at us in the entry. He jumped out of the window; I saw him fall; walked to him and helped him up; some one of the party took hold of him, and told him, "now, damn him, to go back and show him where them guns was." We walked to where Elijah Sepaugh was standing; seen that he was hurt in the wrist; he said he was shot. Just as I walked up to him, Henry Sepaugh, Elijah's brother, came up, and seeing that he was shot, drew a long howie knife and walked to where I left the nigger lying. In a few minutes after Sepaugh went back, some of them came up and said that Henry Sepaugh had cut his throat. Roundtree was a colored man; a Radical; was on other raids; one when John Wright was whipped.

December 20.

Mary Robertson. The first night the Ku Klux came to my place was Sunday night; they came, bursted in the door; asked if my husband was in; gave my little boy two cuts; they searched about the house; took the gun

out of my house; then they went to Jim Crosby's and got his gun and broke that. They did not find my husband that night; one of the party was Captain John Mitchell; that is the man (pointing to prisoner); about two weeks after they came again; they halloood open the door, and I opened it; the man held a pistol at my breast. Said he, "damn you, make a light; where is your husband?" Said I, "he is away." He cut me with a switch, and I thought I was cut in two. Then said he: "Walk out," and I walked out to the door, and when I was just outside the door, they made me pull off my sack; then they whipped me with hickory switches. There were four of them, and they gave me five cuts apiece.

Knew the four that whipped me; John Mitchell and his son Joseph; one was little Joe, and little Ed. Leach; he that murdered Joe Leach's daughter. Dr. Tom Whitesides and Watson had white dresses and long horns; they had nothing over their faces; know Dr. Whitesides well.

James Crosby. Live in York County. The Ku Klux came to me first on Sunday night; had been in John Thompson's house; they came to the door and burst it open. Said he, "who are you?" And I said, "my name is Jim Crosby." "Oh yes," said he, "you are that God damn preacher." Says I, "yes, I am." Then he said, "what in the hell are you doing here?" Said I, "I came here to work." They then made me come out of the house, and six of them fell on me there and whipped me at once.

The next time they came I

heard them coming up, and I kept the house between me and them.

On the first raid the men that whipped me was Joe Leach, Dr. Tom Whitesides and John Mitchell. Those two men there (pointing to the prisoners); knew Dr. Whitesides by his size; I knew his track when he went to the gin house for me. I saw the tracks come down from the gin house, and they were all large but one, and one was a small, neat track, and everybody that saw that track said it was Dr. Whitesides'. Know Captain Mitchell; he had a red scarf over his face, and he had red horns; could not swear point blank about his voice; all the proof I had was his size.

Charles Leach. Voted in York County last fall a year ago for Wallace for member of Congress; the Ku Klux visited me last winter a short while after Christmas on Monday night; they surrounded my house, burst the door open, and three of the men came in, asked me for my gun, and said: "If we find any we will kill you; you are a God damned Radical." "Yes," said I, "I voted the Radical ticket;" said they, "You belong to that God damned League." "Yes," said I, "I went to the League meeting twice, and," said I, "I didn't see much sense in it; I didn't go back any more; I thought that I was all safe, but

just as they got to the door, they gave me sixty or seventy lashes, and then they told me to go back to bed, "and if we hear any more of you, will come back again." Did not know any of the party; they were so disguised; all of them had their faces covered up, and only little holes for their eyes and mouths.

Cross-examined. Know Dr. Whitesides; never heard anything against him.

Elisa Leach. Am the wife of Charles Leach; live on Samuel's plantation, in York County; remember Ku Klux coming to my husband last winter; don't know what night it was, but it was Monday night after Christmas; they rode up, and they broke down our door and ran in; one of them fired in my husband's ear; they asked him what sort of a man he was, and he showed them his paper, and they read it; they said, "Have you got a gun and ammunition?" He said he hadn't got none. They said: "Go and search," and said, "If we find any we will kill you." Then went and whipped him; when they had done, they said, "If we hear any more from you, we will come back for you." They asked him if he was a Radical—if he had joined the League; he said he went there two or three times, but he didn't see any sense in it, and he didn't go back any more. Did not know any of them.

THE WITNESSES FOR THE DEFENSE.

W. C. Whitesides. Know Charles W. Foster; saw him in jail at Yorkville. He said he had thought Dr. Whitesides was the man on the raid, but he was mis-

taken; that he was not on the raid that whipped Charley Leach and Charley Good! that he would see Major Merrill and rectify it.

There were present when he said that, McArchey, John Millar and Robert Riggings; think Mr. John Millar and Robert Reagan were in the same room. Saw Captain Mitchell the night Charles Lynch was whipped at my father's house. He came to see my brother, Dr. Whitesides, who was at Dr. Darwin's.

John Millar. Saw Chas. W. Foster in jail at Yorkville; heard him say that Dr. Whitesides was the man he reported; I heard him halloo back, and say that he was going to Major Merrill, and say that he would correct that mistake about Dr. Whitesides; and Dr. Whitesides replied, we will go home, then, in the morning.

Robert Riggings. Know Charles Foster; saw him in jail at Yorkville; heard him talking about Dr. Thomas Whitesides, my brother; said he was mistaken in the man—that was on the Charles Good raid. He had told Major Merrill that he was on the first raid, but he was mistaken in the man; said he would fix it with Major Merrill; he was going right then, and he would tell the Major that he was not the man.

Robert R. Darwin. Live in York County; am a practicing physician; know Dr. Thomas Whitesides; remember the night when Chas. Good and C. Leach were whipped. He was at my house that evening; I was not at the house when he came; it was just after dark that I came in, and he was there; it was about eight o'clock when he left there; went to Capt. John Mitchell's to see Capt. Mitchell's mother; Dr. Whitesides remained at Mr. Mitchell's till next morning after

breakfast; we both remained there; Mrs. Howe was there and her daughter Sallie, and Mrs. Whisonant. We sat up all night with Mrs. Mitchell. She had several attacks of epilepsy from chronic inflammation of the stomach.

Mrs. Mary Howe. Remember hearing of the raiding upon Charles Leach and other negroes in Yorkville on the night I was at Captain Mitchell's; was sent for that evening; old Mrs. Mitchell was taken very sick. Dr. Thomas Whitesides and Dr. Darwin were there also, all night; we all stayed up there all night. Dr. Whitesides and Dr. Darwin got there about ten o'clock; Dr. Whitesides left there after breakfast.

Cross-examined. It was the 9th of January on Monday night; recollect very well it was on Monday night.

Mrs. Hannah N. Whisonant. During the greater part of the month of January was at the house of Captain Mitchell; am his sister; the physicians in attendance on my mother were Dr. Whitesides and Dr. Darwin; they came at ten o'clock at night. We sat up with her all that night, myself, my sister-in-law, Mr. John Mitchell, Mrs. Howe, Miss Sallie Howe, and the doctors. It was the 9th of the month, Monday.

Sallie Howe. Am daughter of Mrs. Howe; was at Capt. Mitchell's house when his mother Mrs. Mitchell was ill; cannot tell the date. Mrs. Mitchell was very sick and sent for mother and myself; Captain Mitchell went for the doctor about dark; the doctors came about ten o'clock, I think, Dr. Darwin, Dr. White-

sides and Captain Mitchell. We all sat up all night; Captain Mitchell was there all night; he came back about ten o'clock; he never was away all night. It was in January. Heard soon after breakfast that Pres. Thomasson and Charles Leach had been whipped.

Samuel. Mitchell. Captain John Mitchell is my father; am fourteen; recollect the night grandmother was sick. Mrs. Howe and Miss Sallie Howe, and Mr. Howe, and pa, and Joe, and Dr. Tom Whitesides, and Dr. Darwin were there; was up till 12 o'clock; when I went to bed father was sitting in the room; heard of Charles Leach being whipped the next morning. Understood that they whipped Charles Leach and Butler Smarr and Pres. Thomasson, and three or four more.

Thomas Bolen. Remember the raid on John Thomasson, the husband of Mary Robinson that night; Allen Crosby, Sherod Childers, Hezekiah Porter, myself and Van Hemphill were in the party; know Dr. Thomas Whitesides; did not see him that night. He was not one of the men that went to the gin house. Do not know of Dr. Whitesides being on any raid; that was the night Mary Robinson was whipped; did not see anything of Mr. Mitchell that night.

Cross-examined. Am a member of the Klan; was on the Wm. Kell raid; John Mitchell took command of the Klan; he was there; the raid fell through; the disguises were taken up and taken home; do not know if the prisoners were in the raid on Charley Leach and Charley Good.

December 21.

Major. Gulston. Live in York County; heard of a plan on foot for the burning of houses in that neighborhood from Reuben Kennedy, he is a colored man. Dr. Tom Whitesides' was one house; John Smith, Captain Mitchell and John M. Whitesides' were others. Sam Jeffrey's, in Union; John McCullough and Colonel Jeffrey's; he said it was very frightening to every man in the country, this killing and raiding, and he said this was the plan to stop that killing; know Captain Mitchell. He has a mighty fine character. He was disposed to act toward the colored people like as if he wanted them to live and do well; if they were responsible people and wanted help, he would let them have anything to support them, and they were to go to him for it; belong to the Radical party; voted the Radical ticket the last election; there were no threats used to hinder me and others from voting.

Butler Askew (in rebuttal). Live in York County. Five of the Ku Klux raided on me; they made me pull my shirt off, and whipped me the third of February, Sunday night. They asked me if I was going back to the League any more; told them I was not. They asked me if I was a Radical; told them I was; they told me if there was a chicken-coop or anything burned they would kill all us damned rascals; voted at the last election; I voted the Radical ticket. Butler Askew was whipped the same night I was. Charley Leach was whipped a good while before I was.

Jack Downton (in rebuttal).

The Ku Klux came there to my house, shot my dog and wounded him, and came and asked me if I belonged to the League; told them I did; asked me if I belonged to Bill Kell's League; told them I did. They asked me what I joined for; I told them because I thought it was all right. They took me out and whipped me about one hundred licks; they didn't pull off my shirt. I did not know any of them—they had their uniforms on.

K. L. Gunn. Was present at rendezvous when they went on the Bill Kell raid, and saw Captain J. W. Mitchell there, and Charley Howe. After the raid saw him put disguises in that bag.

Amos Howell. The Ku Klux made a raid on me last winter and whipped me the same night that Charles Leach, Press Holmes, Charles Goode and Jerry Thompson were whipped. They also whipped Wiley Edwards. They whipped me very bad. Gave me about fifty

Elias Ramsay. Know Robert Riggins; he was elected chief of a Ku Klux Klan; he was on one raid when I was with him; he was elected chief at Sharon Church; they made a raid at McConnellsville, when Jim Wil-

liams was hung; Robert Riggins was on that raid, and was disguised; know John Millar; saw him at Sharon Church when they met to organize the Ku Klux.

John Robertson. Saw Dr. Whitesides at Chester about three weeks ago; he told me he was mighty glad to see me; he talked to me and Gyles Good, another colored man, and he said to me: "If we damned niggers didn't get him out, he was gone up;" he was then on his way here, and was under a guard of soldiers.

Mrs. William Wilson. Am the wife of William Wilson, and reside in York County. The first raid made on our place was on Jim Crosby, on 20th January. Jim Crosby was whipped, and some guns were broken belonging to him and John Robertson; next raid was on the 3rd February; they took my husband out, and they shot under the house. There was another raid three weeks from that time. Mary Thompson was whipped, for they told me next morning that she had been whipped. Next they came to our gin house, when they said they were hunting for John Robertson, Mary's husband; and they raided on us again about a week after that time. They took Jim Crosby out of his house, a piece off, and made some threats.

MR. WILSON FOR THE DEFENSE.

Mr. Wilson. Gentlemen of the Jury: The client which I represent in this case, Dr. Thomas B. Whitesides, asserts his innocence, and respectfully, but with confidence, submits to an intelligent Court, to the frankness of an able counsel, who represent the Government, and to your sense of justice

and right as jurors, that he should have a verdict of acquittal.

We are not here to defend or excuse crimes that shock and disgrace humanity. I have listened with amazement, and with disgust, to the tale of horror that has been narrated to the Court. My client, Dr. Whitesides, utterly denies that he was a member of the Ku Klux organization. He denies that he ever participated in any of its outrages or its acts of violence. I am sure, gentlemen of the jury, that you will remember that the evidence comes from prominent witnesses on the part of the Government, but that he denounced it as the most damnable thing that ever existed in any country. This denunciation was made; when? Not in the day of its panic and disaster, when the angry power of the Federal Government burst upon it like a thunderbolt from a clear sky, but on the first of March, 1871, when it was in the first blush of its strength and terror; when it required a man of nerve to face it; and it was then that Dr. Whitesides denounced it. To whom? To its sworn and active members. The Government witnesses tell you that, and upon that we stand.

In the defense of Dr. Whitesides, it is not necessary for me to discuss the legal questions in the case. I submit and trust his case upon the issue of fact.

I deny his guilt, and I ask you, gentlemen of the jury, in patience, to listen to a synopsis of the testimony offered on the part of the Government, and on the part of the defense, and then decide as to the guilt or innocence of this prisoner.

Wilson Davis, who showed a perfect familiarity with the names of those belonging to the Ku Klux organization in the vicinity where Dr. Whitesides resides, and he states he never saw Dr. Whitesides in a Ku Klux Klan.

The most important witness of the Government, perhaps, Mr. Gunn, as late as March, 1871, gave Dr. Whitesides the Ku Klux signs, but he was unable to respond to them. Mr. Gunn then commenced talking with my client,

and he denounced it as the most damnable thing that ever existed in any country.

The next witness rushes to the witness stand to rescue himself from prosecution, Charles W. Foster. He admits that he has been in the very depths of this abyss of crime and outrage upon those unfortunate and often innocent persons who were lashed and tortured. He comes here a swift witness against a man he is disposed, for some unknown reason, to hunt down; but, gentlemen of the jury, that God who had perfect cognizance of the true facts of the case has completely crushed the testimony that he gave against Dr. Whitesides.

The various witnesses testified that, on the night of January 9th, 1871, when Foster swore he was with the raiding party that whipped Charles Leach, Dr. Whitesides was attending the sick bed of old Mrs. Mitchell, in company with Dr. Darwin and Capt. Mitchell, where he spent the entire night with Mrs. Mitchell, and breakfasted at the house in the morning before he left.

These facts were all corroborated by the testimony of Dr. Darwin, Mrs. Howe, Miss Howe, Mrs. Mitchell, Samuel Mitchell and Mrs. Whisonant.

Foster testified that Dr. Whitesides was on the raid on Charles Leach, and that he was on no other. Foster saw, on that raid, a man he took for Dr. Whitesides; that all the party, excepting three, (not including Dr. Whitesides,) were disguised with masks and gowns. Foster did not ride near Dr. Whitesides, who rode, he says, in front, while he, Foster, rode in the rear. Foster did not recollect that the moon was shining, and he admits he did not speak to Dr. Whitesides.

On Foster's recall this morning he says that he spoke with Dr. Whitesides while on the raid, and asked him why he did not bring some whisky, none of which did he testify to on his direct examination. The only possible presumption is, that Foster was mistaken in the disguised Ku Klux with whom he says he spoke; for it could not possibly have

been Dr. Whitesides, unless every one of the various witnesses who saw him at Mrs. Mitchell's, on the night of the 9th January, 1871, had perjured their souls by false testimony.

Again, Foster is shown by other witnesses to have said in jail that he was mistaken in saying that Dr. Whitesides was on that raid, and witness swore that he said he would go to Major Merrill and rectify the mistake; that they heard him also—after he got out of jail, and was going to Colonel Merrill's, in reply to Whitesides' request not to neglect to fix that matter—say, I will go right straight now to Colonel Merrill's and correct the mistake. When Foster, in his testimony, stated that he said to Whitesides, "I am going to Major Merrill's," I asked him the question, "did you not say that you were going to correct the mistake?" his reply was, "I don't recollect." Gentlemen, we have put up witnesses who do recollect. Now, it is claimed that one of those witnesses was a Ku Klux. What was Mr. Foster but a Ku Klux? If that is to discredit Riggans, the same objection will apply to Foster. But we put up other witnesses who tell you that they were not Ku Klux.

Well, now, here is the admission of Mr. Foster himself, that he was mistaken; that he is satisfied that Dr. Whitesides was not on that raid.

You have, gentlemen of the jury, the strong probability that Foster was mistaken in supposing that Dr. Whitesides was on that raid that night. You have Mr. Foster's positive admission that he was mistaken, and that he would go and correct the mistake; and then, to crown all, to dissipate all doubt upon your minds, you have the positive testimony of Dr. Darwin, Mrs. Howe, Mrs. Whisonant, Miss Howe and Charles Mitchell, proving that he could not have been there, because he was somewhere else. I think that disposes of Foster.

The next witness was Mary Thompson. She does not speak of this raid of the 9th of January, 1871, and she does not specify any particular date. She says she saw

two men with masks and gowns on, and one of the men was Dr. Thomas Whitesides. She was undoubtedly in a state of alarm and terror, and doubtless she thought it was Dr. Whitesides although his face was covered and it was in the night. How easy for her to be mistaken.

Jim Crosby also testified that it was Dr. Whitesides. Well, how does he know? "Why do you think it was Dr. Whitesides? Did you see him to recognize him?" "No; but I saw a track, and I thought it was Dr. Whitesides' track."

Now, gentlemen, did we offer nothing to rebut this testimony, I am sure you would receive it with hesitation; but there was a witness, Mr. Thomas Bolen, whose testimony was given in full, at Yorkville, to Col. Merrill. He tells you the whole story—he goes upon that stand—he takes a solemn oath that he was a Ku Kluxing; and that he was with that party—he names them all; and he says that Dr. Whitesides was not there. Here you have positive proof by a Ku Klux, a Government witness, whose confession the Government has taken, who tells you that Dr. Whitesides is innocent. Tom Bolen was a Ku Klux; he was familiar with the Klans of the country; he knew the names of their men—of their Chiefs. Was Dr. Whitesides a Chief? "Did he belong to any Klan?" "No, sir; I never saw him; he was never on any raid." Why, even Charles Foster admits that; he says he was never on any raid, except on the ninth of March.

There was a witness who fixed the date, the 25th of January—a young man by the name of Amos Howell. He may have been whipped on that night, but that testimony, if it was offered to change the date to the 9th, certainly can amount to nothing. The testimony of every witness of the Government proved conclusively that it was the 9th, and whether Amos Howell was whipped on the 25th or not is wholly immaterial. The 9th was the date first fixed by the Government witnesses; Charles Foster and his testimony was taken down—swears that it was on the 9th of

January, 1871, and it cannot now be altered to the 25th of January.

Gentlemen, I ask you that, in the presence of your oath—your solemn oath—that oath which invokes the Almighty to witness that you shall honestly decide this case—in the presence of that solemn oath—what other motive can a juror have in the discharge of his high functions, but to be controlled by simple obedience to truth and duty. The United States Government cannot, do not, ask that the innocent be convicted, or to inflict its penalties upon any but the guilty; and if, in this time of high party excitement, you can soar above the passions of the hour, and the prejudices of race, you will vindicate before the world, and in the noblest manner, your claim, your fitness for all the privileges of the American citizen.

MR. MELTON FOR THE DEFENSE.

Mr. Melton. Gentlemen of the Jury: There are two leading points in this indictment. The one is a charge of general conspiracy, with intent to violate the first Section of a designated Act of Congress, by unlawfully hindering, and preventing and restraining divers male citizens of the United States, of African descent, from exercising the right and privilege of voting, and by other unlawful means in not allowing them to vote. That feature of the indictment charges no specific act against any person. The Court has ruled, and will so instruct you, that the mere fact proved that any man is a member of an organization, having such objects, is sufficient to warrant your conviction of him on the first count. The other features, which covers the three additional counts in the indictment, are the features which charge a special conspiracy against an individual member of the community, named Charles Leach. So that your duty, in the investigation of this case, is first to determine as to these defendants, and particularly as to Captain John W. Mitchell, whom I represent, whether he was a member of

any combination, the purpose of which was to interfere with the right of African citizens to vote.

In the face of the testimony offered here I cannot stand before you and say that John W. Mitchell has not been a member of the Ku Klux organization. It is stated by Foster that he was present when he was admitted into the order; and that testimony stands uncontroverted. It is stated by Foster that he recognized him on a certain raid. The raid here charged is that upon Chas. Leach, and it is stated by the witness, Gunn, that he was with that Klan, or some Klan, at Barclay's Hill, and by another witness, that he saw him at that meeting.

In the face of these facts, which we have not been able to controvert, I cannot ask that you should listen to me in submitting any argument or denial that he was a member of this organization.

But, gentlemen, he makes, by his plea of not guilty, a denial that that organization was ever designed or intended to interfere with African citizens as a class, and to prevent them from exercising the right of citizens to vote, to bear arms, and to discharge all other duties pertaining to citizens. That is what the Government has to prove; and whilst I am compelled to admit that my client belonged to that order, I have a right to ask you, gentlemen, that you shall require of the Government proof that that order had the objects charged in this indictment. How do they propose to prove it? Do they prove it by the constitution of the order? It does not appear there; on the contrary, that constitution sets forth the purpose of the order to be of a different character altogether. It abjures the application of force, and it does not seek to resort to any unlawful means, or designs, or purposes, in carrying out the objects of the order. Was it political? Perhaps it was. But was not the League political? It does not follow because an association is secret in its purposes, secret in its meetings, that it is, therefore, necessarily obnoxious to law. You must look at the organization, at the constitution of the

order, to find what its purpose is; and I say, gentlemen, you do not find there that it had any such purpose.

But what does the Government do in the next step? They undertake to show you, by the admissions of members of the order, that they understood that such were its purposes. Very well, if those members understood it they were guilty of a violation of the law in having become associated with it; but does that agreement bind him who did not understand it?

Now, gentlemen, if it appeared in the constitution of the order that such was its purpose, every man who joined the order knew its purposes; but if it rests alone in my conscience to know what I understood to be its object, then that alone affects me, and does not affect you who did not so understand it.

Has the Government proved to you that John W. Mitchell regarded this combination as one which had for its purpose the interfering with the right of African citizens to vote? How, then, can it charge J. W. Mitchell, even under the first count in this indictment, of having been a member of this organization which had that for its object? Why, gentlemen, where is the thing to stop? They will not confine it alone to interfering with the right to vote, but with interfering with all other rights; not only interfering with citizens of African descent, but of every other citizen; and not only citizens entitled to vote, but those not entitled to vote.

I say it is an unfair mode of ascertaining the purpose of this organization.

What, then, is the next mode? By acts which members of the organization committed; and the great body of testimony which the prosecution has here offered has been directed to developing the manner and enormity of the outrages which individual members of the organization committed. But does that charge those outrages as being committed for the purpose of the organization.

I suppose many of you are members of the Union League,

which is a somewhat similar organization, and a political organization, but I am not prepared to say an improper organization. But I ask you if it should be charged upon ten, fifteen or twenty members of the League, that they had gone out in the community and committed violence, bloodshed and incendiarism, would you feel that it was fair to charge that it was the purpose of your League that blood should be shed, that houses should be set on fire? You would know that that was not the purpose of the League, and that the League had no such design, even although you may have known of such instances. Perhaps members of your League have gone to those of your color, and have said you shall not vote the Democratic ticket. I have heard of instances of that kind, and I doubt not that you have heard of them. But who is responsible for things of that kind? An individual member may have committed such an act, but was it a feature of your League? Was it any purpose of your League? Why, then, charge upon the whole organization those acts which a few misguided, vile miscreants undertook to perpetrate? Was ravishing helpless women a part of this conspiracy? And yet you have been made to believe so, if you are to be guided by testimony of that kind. We have had here, from women, details of the most disgusting character, put forward for the purpose of showing from this act that ravishing women was one of the purposes of this organization.

Now, I ask you, do you believe it, and that there did exist upon the face of God's earth an organization which would have among its purposes that of committing these gross outrages upon helpless women?

What, then, is the meaning of these outrages? They mean no more than that this unfortunate organization—I say unfortunate, because it was unfortunate in its conception; it was unfortunate in its mode of undertaking to carry forward what were its legitimate purposes, in undertaking to carry them forward by disguises and pass words, which would afford reckless men opportunities for mischief

—it means, gentlemen, nothing more than that in that order there were found men who were vile and low, and who, under the protection of the gown and the mask, undertook to carry out their own purpose of lust, and their own private vengeance.

Now, gentlemen, if John Mitchell was connected with any outrages of this character, or if the prosecution has carried home to him, under the first count, a knowledge of such acts as within the purposes of his conspiracy, you may convict him if you choose so to do; but I say to you, gentlemen, that unless you are satisfied that these outrages upon the rights of the colored people—or of the Radical party, if you choose so to consider it—was a part of the constitution of the order, you have no right to say that John Mitchell is proved to have entertained any such purpose as that, unless you show that he himself was at some of the outrages. Men may organize for any purpose. The order of Masons, and Odd Fellows, to say nothing of the League, of which I have already spoken, are organizations existing all over the country. From those organizations every day come forth men who depart from the order. Why, gentlemen, the world is now almost convulsed by the mischievous results of such an organization—an organization designed, no doubt, for beneficial purposes—an organization of the working men of the country, which exists in France, in Germany, and all the nations of Europe, and which today is existing in this country—an organization which finds as a champion one whom you of the colored race have reason to regard as the man who, above all others, has devoted his life to your interests—I speak of Wendell Phillips—and yet, that society whose purposes he is endeavoring to impress upon the people of the country—that very organization is one upon whose members has been charged the outrages which signalized the recent burning of Chicago, and which, in the city of Paris, consummated outrages which made the civilized world blush for shame. That same secret organization is now advocated by one,

of whom, let people say what they will, they cannot deny to him honesty of heart and purity of purpose.

Now, gentlemen, if you understand my argument, before you convict my client under the first count, even admitting that he was a member of the order, you must be satisfied that the order of which he was a member had for its purpose the hindering, preventing and restraining of male citizens of the United States of African descent, who are qualified to vote, from exercising the right and privilege of voting; and I say to you, gentlemen, that that purpose appears not in the constitution, and, if it appears by the testimony of other members of the order, I say that there is no testimony that it was so understood by Mitchell, and, if it is proved that members of the order have committed outrages of this foul character, unless you shall be satisfied, under the subsequent counts in the indictment, that Mitchell was so engaged, we have a right to claim at your hands that he shall be acquitted, even under this first count.

I wish, gentlemen, that it could have been so that I could place Mitchell upon the stand himself. I feel, gentlemen, that in this investigation now going on in reference to these outrages, it would be to the interest of truth and justice, if we could hear from the mouth of this defendant himself, what was his connection with this order. But such is not the law. The defendants who come into this court come with their mouths sealed; not a word are they allowed to utter to explain their conduct, their motives, or their purposes.

Gentlemen, I have no hesitation in saying that in that order are found some men of as pure and noble character as are found in the land. Why are they there? Because the foul miscreants who traversed the country, interfering with the laboring population, forced the employers of the colored people to go into the ranks to secure their own laborers from these outrages. They have gone into the order for the purpose of using their influence to prevent the consummation of these outrages, and to endeavor to

control those who were running rough-shod over the best interests of the country. I would have been glad, gentlemen, if I could have placed the defendant on the stand. Perhaps he could have told you why he was at Barclay's Hill; perhaps he could have told you why it was that that raid, which was attempted on that night, was prevented; who it was that prevented it; and perhaps he could have told you of other raids where he was when mischief was prevented; where the whole party was induced to desist from their purpose and to go home. Cannot such a thing be? Yet, I do not complain of the law. I am always content with the law as it is. But, gentlemen, my client is without the opportunity of saying anything in his own behalf. What was his understanding of the purposes of the organization; what was its purposes and what the extent of his connection with its operations, you cannot know, for he is not permitted to tell you. When his mouth is thus closed, you should ask, at least of the Government, that they should fasten upon him, beyond reasonable doubt, the acts of criminality which would authorize you to find him guilty. This is not the only case in which he is indicted. It is in testimony here that he has been spoken of as the Chief of his Klan, and you have heard indictment after indictment read, in which his name appears. If, then, gentlemen, he has been guilty of any of these outrages with which he is charged, you may be well assured that he will be, in some one or other of them, reached.

I now ask your attention, gentlemen, to the fact that he is charged with having been a participant in this raid upon Charles Leach. Do we find anything in the testimony of Charles Foster, which connects John Mitchell with whipping Charles Leach. He did not recognize Mitchell at Howell's Ferry; he only says, that others in the crowd spoke of Mitchell. Is that sufficient testimony to warrant you in finding a verdict of guilty against him? I think I am not mistaken, when I state to you that that testimony of Foster, unsatisfactory as it is, is the only particle of tes-

timony in the whole case to show that John W. Mitchell was on that raid.

On the other hand, what do we show you? What was the date which the witnesses for the prosecution fixed at the outset? The very day which we knew to be the day when Charles Leach was whipped. You recollect well that Foster fixed it on the 9th of January. Our own witnesses fixed it on the same night; and on that night John W. Mitchell was at home with his sick mother, and sat up with her all night.

Gentlemen, it will be asking too much of you by the prosecution, to assume for one moment that we have failed to connect on testimony of an alibi, with the correct date of this outrage upon Charles Leach.

If you believe our testimony, John W. Mitchell is not guilty of having been present at this raid. I trust he may be as successful in establishing his innocence of any other of the several charges which have been brought against him. I would be sorry to believe that one who has lived as long as he has, and who has sustained the character that he has, should forfeit it by being shown to have lent any sort of aid and countenance to the perpetration of such outrages upon these people, who are comparatively helpless and ignorant—who are dependent upon the kind offices of those who are more favored than they have been, and who have heretofore received kind offices of him, who here, today, sustains a character of uniform kindness towards them. I shall be sorry, if he fails to sustain his innocence in connection with every other charge brought against him.

I feel well assured, gentlemen, that, under the sanction of your oaths, you can honestly say that he is not guilty of this outrage. Having said this much, I leave his case in your hands.

December 22.

MR. CHAMBERLAIN FOR THE PROSECUTION.

Mr. Chamberlain. Gentlemen of the Jury: We are now approaching the conclusion of another long trial. I can-

not forget that this trial is similar, in many of its features, to another which has recently been presented to this Court, and to another jury; but I ought to remember, in presenting this case to you today, that it is a new case, and that I am not to assume that any part of this case, or any features of this conspiracy, about which this discussion is about to be had, are known to you. I am not to suppose, gentlemen of the jury, that you, sitting here upon this panel, have any knowledge of this case, or of this conspiracy, except what the Government and the defense have presented to you during the progress of this trial.

I don't forget that there are some faces before me that were before me in the former case, but yet, this trial concerns new defendants, it rests entirely upon new evidence, and it is necessary for you and me to remember that we are to try this as an entirely new case, and it devolves upon me a labor which I could wish to avoid, that of again presenting to you, fully and completely, so far as I am able, the features of this conspiracy, its intentions, its purpose, its methods, and its operations, and then to see what connection these two defendants have with this conspiracy.

I have, gentlemen, the same feelings, in commencing this trial, which I had in the former case. These prisoners have been well defended—defended by as much ability and as much eloquence as the profession of South Carolina can boast. Whatever there is of law or of evidence which tends to show that these two defendants were not connected with this conspiracy has been presented to you; and it is a pleasure to me to express my great respect both for the ability, the ingenuity and the eloquence with which my friends, the counsel for the defense, have presented the case to you. I can have no feeling, therefore, that I shall unduly urge this case on behalf of the Government. I have not the ability, I fear, to equal their eloquence or ingenuity in the prosecution of the case in behalf of the Government.

But, gentlemen, there is one feature which draws a broad line between this and the former case. These two men who are

before you today are nobody's dupes. They are not thoughtless, uneducated, ignorant and inexperienced young men. They cannot plead any exemption from the full responsibility of what they have done, and what they intended, on the ground that they occupied an humble position in society, and that, when they found that community swept by the terrible tornado of this conspiracy, they were driven into it against their judgment and their principles. These men, gentlemen of the jury, Dr. Whitesides and Captain J. W. Mitchell, are men of standing, men of substance, and men of education; men who have been accustomed to lead and influence the community of which they formed a part. It is not necessary for me to say to you that the United States does not seek to convict these men, unless the evidence and the law point to their guilt. The Government does not ask for vengeance or for blood; but when we do meet a case like this, of men concerned in a conspiracy with intent to deprive whole classes of the community of their rights, and find they are men of repute, and men of influence, the Government says, and the conscience of every man says, that then, if ever, the full measure of justice, the full responsibility for acts done and purposes planned, is to be visited upon such defendants; and, therefore, it is that I have another feeling which I did not experience in the last trial, not only that I ought, in justice to this cause, but that I can feel honestly that every particle of evidence and every principle of law should be pressed to its full and just conclusions as against these defendants, defended, as they are, by learning and eloquence. The defendants are reputable citizens, in high social standing in the community. If you do find that the evidence points to the guilt of the defendants upon this indictment, then, if you are not swift to find your verdict, you will at least be unhesitating in following the line of the evidence and the law.

Now, gentlemen of the jury, these defendants are arraigned upon an indictment containing four counts. The

first count charges them with a general conspiracy, not a conspiracy directed against Charles Leach, or any other particular individual, but charges that they were engaged in a general conspiracy to deprive the colored citizens of York County of their right to vote. The second, the third, and the fourth counts charge them with a special conspiracy. The second count charges them with a conspiracy to injure Charles Leach, because he voted in 1870. The third count charges them with a conspiracy to prevent him from voting in 1872; and the fourth count charges them with a similar conspiracy to injure and oppress him because he voted for a particular individual, A. S. Wallace, as member of Congress.

You see, therefore, gentlemen, that the first count alone charges what I may call the general Ku Klux conspiracy; while the second, third and fourth counts charge a special conspiracy to injure and oppress a single individual, named Charles Leach.

It is my duty, gentlemen, to draw your attention to the connection of these defendants to the first count; and what I propose to show to you, in the first place, is that this was a conspiracy, in York County, which called itself the Ku Klux Klan, the object of which was to deprive colored citizens of that county of their right to vote; in the second place, that they carried out that conspiracy and did attempt, in all their operations and by numerous raids, to carry out the purpose of that conspiracy; and then, in the third place, that these two defendants were members of that conspiracy and responsible for its operations and its acts.

Now, gentlemen of the jury, there is another principle of law which you must carry in your minds through this discussion, and that is, that when a number of individuals have banded together for the accomplishment of a common purpose, the law treats them as one man. If you twelve men, who sit before me, join together to accomplish an unlawful purpose, the law looks upon you as one man, and the meaning of the word conspiracy is "a breathing to-

gether." You speak one voice, you wield one arm, you are a single man while engaged in that conspiracy; and, therefore, what any one of you says or does, while in pursuance of that conspiracy, is the act and declaration of you all. It is not, therefore, Mr. Foreman, necessary that we should prove that you did the act which we charge upon the conspiracy; it is not necessary for us to prove that you, Mr. Jurymen, were the party who made the declaration; but if the last man that sits upon the panel, while in pursuance of that conspiracy, has uttered a word or done an act connected with that conspiracy, it is the act of every one of you twelve. If, gentlemen, we succeed in showing that Dr. Whitesides and Captain John W. Mitchell were members of that conspiracy, it is unnecessary for us to prove, under this first count, that they went upon a raid; that they ever lifted a lash or struck a blow; if they are members of that conspiracy, whatever raid any member rode upon, there rode Dr. Whitesides and Captain Mitchell; and upon every negro's back that they struck their blow, no matter what their names, if they were conspirators, and members of this Klan, those blows were struck by Dr. Whitesides and Captain Mitchell.

Now, gentlemen, if we can show that such a conspiracy existed, and that these defendants proposed to deprive colored citizens of their right to vote, and that Dr. Whitesides and Captain Mitchell were members of that Klan, then they are guilty under this first count.

Your Honors, speaking the voice of this Court, have already given us the law, which is the common law of conspiracy, about which there can be no dispute; and in order to ask your verdict, gentlemen, on this first count, it is not necessary to prove that Dr. Whitesides or Capt. Mitchell ever went on any raid, although we shall prove it. It is not necessary to show that they were personally cognizant that Charles Leach was ever whipped, or that any colored man in York County was ever whipped. If they joined the conspiracy which had that for its object, they

are responsible for the acts which carried into effect the purposes of that conspiracy.

No, gentlemen, I am not pressing the law in order to envelop these defendants, but I am stating to you the law precisely as it has been already delivered to you by the Court, and as it will be delivered to you before you are charged with this case.

The Court, in the case of the United States vs. Robert Hayes Mitchell, instructed you that the act of one was the act of all. It is not necessary to show that Charles Leach, Charles Good and others were whipped because they were Radicals. The conspirators may have had private grudges, which they went there to gratify; they may have chosen to punish these men because they were members of the militia company. It is not necessary to show that to prevent them from voting was the only effort of this conspiracy; if we show to you that it was one of their objects, it is enough. So that, gentlemen of the jury, I want you to understand just how much is necessary to sustain this first count, and that it is simply this: That the Ku Klux organization was a conspiracy to deprive persons of color of their right to vote, and that this was understood to be its object, and that Dr. Whitesides and Capt. Mitchell were members of that order; and while we shall show to you, gentlemen, that they were not only members of the order, but that they participated in its acts, and were present at its meetings, it is not necessary for us to do more than simply to show that they were members of this Klan.

Now, gentlemen of the jury, what evidence have we of this conspiracy? We have, in the first place, the evidence of its written agreement. I know, gentlemen, that many of you are aware, from a former case that has been presented here, what I am about to say, but I beg that you will listen to me, because you are charged with this case alone, and I must present it to you as if it were a totally new case.

This paper, which I hold in my hand, purports to be the

constitution and by-laws of the Ku Klux Klan, of York County, South Carolina. It is recognized, by its oath, by Mr. Davis, by Mr. Gunthorp, by Mr. Gunn and by Mr. Foster. Its oath is recognized by each of these four witnesses as the oath which was administered to them when they were admitted to the order. Now, gentlemen, what does the oath indicate as the purpose of this conspiracy? Let us look into it and see whether it has a lawful purpose, or whether it intends to accomplish its purposes by unlawful means.

The oath binds each member of the order to this, that he shall be on the side of "justice, humanity and constitutional liberty, as bequeathed to us in its purity by our forefathers," or, as Mr. Davis tells you, in the oath he took, bound him to be on the side of justice, humanity, and to oppose the 13th, 14th and 15th Amendments of the Constitution of the United States. Let us see what this points to: "Constitutional liberty, as bequeathed to us by our forefathers." This sounds like an innocent phrase. It is the introductory sentence to the oath of this order. What does it mean? It means precisely what Mr. Davis found it to mean. It means the Constitution before it was amended by the 13th, 14th and 15th Amendments. "Constitutional liberty, as bequeathed to us, in its purity, by our forefathers," means slavery as it existed in the Constitution of the United States, and was protected, and not only protected by the municipal laws of South Carolina, but protected and enforced by the National law and Government, in all its departments; and, if some of you, gentlemen, had escaped in those days beyond the limits of South Carolina, even to the last foot of ground before you reached the dominions of the Queen of England, this national law, this constitutional liberty, as bequeathed to us in its purity by our forefathers, would have seized you, and brought you back and planted you again upon the plantation, and within the reach of your former masters. Constitutional liberty, as bequeathed to us in its purity by our forefathers,

IX. AMERICAN STATE TRIALS.

means opposition to the thirteenth, fourteenth and fifteenth amendments. The thirteenth amendment abolished slavery; the fourteenth amendment secured the equal rights of all citizens of the United States against any discrimination or distinction on the part of the Governments of the States; and the fifteenth amendment, which crowned the edifice of civil rights, protects the citizen in the right to vote against any discrimination on account of race, color, or previous condition. This organization, then, gentlemen, is directed against the thirteenth, fourteenth and fifteenth amendments to the Constitution. It is, therefore, directed against the freedom of the African race, against their general equality before the law, and, finally, against their right to vote, in spite of any discrimination on account of race, color or previous condition.

What is the second paragraph of this oath? "We oppose the principles of the Radical party." Now, gentlemen, it comes to be narrowed, from general opposition to the new amendments to the Constitution, down to opposition to the Radical party. If it had said we are opposed to bad government, we are in favor of the Union of the States, we oppose corruption and misrule, from whatever party it comes, its purposes might have been so broadly and generally stated that you could not see that it was a political conspiracy, and directed against a particular party in the community. But an honest guise is now worn, and after declaring itself on the side of Constitutional liberty, as bequeathed to us by our forefathers, it says: "We oppose and reject the principles of the Radical party." So, far, therefore, gentlemen of the jury, we have reached an organization which is to oppose a political party which exists in this community. It is, therefore, an oath-bound organization, directed against a political party, and declaring its purpose to oppose the Radical party.

"Any member divulging, or causing to be divulged, any secrets of the order, shall suffer death." Now, gentlemen, we begin to see that this is a serious business. It is not a

political club to circulate information, to distribute documents, and exercise its influence freely and generally in the community, but they have secrets. They are going to perform deeds which must be concealed from the world; and not only must they be concealed by an ordinary oath, but it must be concealed and kept from the world by an oath, a part of whose obligation is, if any member discloses any secrets, he shall be put to death. Do you not know, gentlemen—does not the world know—that any organization formed in this country, whose secrets are so valuable to its members, so sacred and binding, that he who discloses them shall be punished with death, is an illegal and unlawful organization?

Something has been said to you, gentlemen, about the Union League. Did anybody ever pretend that that ever was an organization other than voluntary, and existing under the shadow of law? Was it ever pretended that it was an organization which deliberately put down in its constitution that those who divulged its secrets shall be put to death? Does the League punish its members who leave its ranks and expose its secrets? Does it declare itself opposed to any political party? It does not; for the most of you, I doubt not, as well as myself, know that that organization excludes no man on account of his politics or color, and demands no political faith for its membership, and harms no man if he joins it and reveals its secrets to its deadliest enemy; yet here is an organization which opposes the principles of the Radical party, and punishes with death those who expose its secrets.

This organization, gentlemen, requires, further, that every member shall provide himself with a pistol, with a Ku Klux gown and a signal instrument. What purposes, gentlemen of the jury, are to be executed with a pistol, a Ku Klux gown and a signal instrument? Are they lawful purposes requiring a pistol and a disguise for the body and the voice? I insult your intelligence and your common sense, gentlemen, if I stop to argue to you any longer that

an organization, which puts members to death for exposing its secrets, and requires its members to go upon their duties with a pistol and disguises for the body and the voice, is an unlawful combination, and is a conspiracy, in the most thorough sense of that term.

What next, gentlemen? "No person of color shall be admitted to this order." Why not? Cannot persons of color be on the side of Constitutional liberty; on the side of justice and humanity? May they not provide themselves with a pistol and a Ku Klux Klan gown and signal instrument? May they not be ready to take an oath to put to death any fellow-member for divulging their secrets? Certainly they may; and yet no person of color shall be a member of this organization. What, then, have we? We have an organization, bound together to defeat the three amendments to the Constitution of the United States, which declare freedom to the colored race, and protects them in their rights, disguised and sworn to put to death any of its members who divulges the secrets of the Order; and directed against the colored race, whatever may be their political principles, or other sympathies, excluding them, on account of their color, from the ranks of its membership. And all this, gentlemen, drawn out in detail. The election of its officers, its meetings ordered, its trials of offending members, the sentence of death for disclosing its secrets, and the provision for an appeal before the sentence of death is executed, to some power which is described as the Grand Cyclops, at Nashville, Tennessee, all this, gentlemen of the jury, written and set down, with pen upon paper, and brought here before you and recognized by every member of the order placed upon the stand.

Now, gentlemen of the jury, we come to the conclusion, to which every mind must come, that we have here upon this paper, not only conspiracy, but conspiracy that appalls every citizen of the country. Before we go beyond this point, before we see the actual practice, we are startled with the terrible character of an organization which delib-

erately provides for the death of any man who shall disclose its secrets.

Then, gentlemen, what evidence have we that interprets this written agreement? You remember the evidence of Mr. Davis, that he was a member of the order, had attended its meetings, and had met to go upon its raids. He tells you that its purpose was precisely what this paper indicates to you, that was, to put down Radicalism, by whipping all the colored members of the Radical party; and that this was its general and all pervading purpose; and while, on special occasions, they might add to it the purpose to punish some person, who was otherwise obnoxious, yet the general, and all-pervading purpose of the organization, was the putting down of Radicalism and negro suffrage. Mr. Davis is, perhaps, upon the whole, the best informed member of the order which we have placed before you. He tells you distinctly, that his understanding, when he joined the order—and he was clerk of the Klan, and recognized its constitution and by-laws—was the whipping of colored men, to injure and oppress them till they should be afraid to vote the Radical ticket.

Mr. Gunthorpe tells us that as early as 1868, three years ago, and more, he joined an order in that county, and after he had entered it, he found that it was a political organization aimed against the negro Radicals, and he left it.

Mr. Foster, who went further than any of these witnesses, and joined in these raids that have been described to you, tells you, in terms that have never been contradicted, that he never otherwise understood that order than that its purpose was primarily and always and everywhere to interfere with the right of the colored men of York County to vote and to exercise their free choice in their elections. They undertook, also, to subdue the few scattering white Radicals there; but their aim was so to terrorize that community that no colored man who had been set free by the thirteenth amendment, and made a citizen and a voter by the fourteenth and fifteenth amendments, should be any

better, or, gentlemen, as well off, as when he was a slave; for if Charles Good and Tom Roundtree had been the property of any man in York County, would he have suffered their throats to be cut? If you have not rights, you had better be property, for then man's cupidity at least will protect you in your life. Mr. Foster tells you that always and everywhere its purpose was to whip those negroes who had influence, and who had voted the Radical ticket.

Now, gentlemen, what other kind of evidence have we? We have the written agreement, and the testimony of these four witnesses as to how it was to be carried out. What next, gentlemen? Mr. Davis tells you that Charles Good was whipped by this order, and why? Wesley Smith told him that he was whipped because he was a Radical, and had influence among the negroes. And what became of Charles Good afterwards? He was so imprudent as to say he thought he knew some of the men who whipped him, and what happens? Carrying out its opposition to Radicalism, they have whipped him, and the poor man tells somebody that he thinks he knows some of the men who did it, and this conspiracy takes him upon the highway and ties him to a tree; half kills him by shooting him, and finishes him by smashing his head with a rock. Members of the order go to Mr. Davis, a brother member, and tell him that they have done it; and one of them says: "I shot him," and another says: "I finished him before I left." Gentlemen of the jury, only three or four men may have killed Charles Good; some of those who have not been engaged in this murder, may shrink back and be startled into confession by the enormity of this crime, and therefore the order goes forth that every member of the order shall assemble, in the field, where the body of this negro lies, and carry him and conceal him in Broad River. Then every man is connected with the murder, and if he gives evidence he gives it against himself. They meet, gentlemen of the jury, this Ku Klux Klan, they sink the body in Broad River, and one of them, apparently with less remorse or

more daring than the rest, jumps upon the body, and drives through it the stakes that are to hold it to the bottom of that stream.

That is the Ku Klux Klan, gentlemen, not upon paper, not by the voice of the witnesses, telling you about its order, but it is the Klan speaking through the pistol, under its disguises, and carrying out the full purposes for which it was formed.

But this is not all. Do you remember the witness, Mr. Bowens, who was one of the party that raided upon Tom Roundtree, and shot him as he was attempting to escape, and then went to him with a bowie knife, while he was yet breathing, and cut his throat from ear to ear? And what is the matter with Tom Roundtree? Was he a militia man? Had he fired any body's house? Had he threatened to kill from the cradle to the grave? That "cradle to the grave," gentlemen, is a white man's story. We have heard enough of it. You know, gentlemen, it is not the vernacular of the negro; it is the white man's tale, told after the deed; but even this is not brought against Tom Roundtree; he is a man of substance, a reputable citizen of that community, and the only known offense which he has committed, is that against which this conspiracy is aimed—that he was an influential member of the Radical party.

Gentlemen, shall I go over those other instances of violence and atrocity? No, I cannot; it is enough that it has been repeated in this court—and that it will go forth to the world in the public prints. Let us not, if we can avoid it, stain our lips, or fill our minds again with those horrible details. But wherever we find the Ku Klux Klan striking, they are striking against Radicalism—against negro Radicalism; and my eloquent friend asked yesterday, if, when they are ravishing women, and whipping women, if they are still pursuing Radicalism? I answer, yes, yes. When they whipped Mary Robertson it was to make her tell where her husband was; when they ravished Jane Simril, it was to punish her as well as to gratify their lusts, and

to punish her because she would not tell where her Radical husband was. Not an act, gentlemen, but what points to this general purpose, wherever you see the Klan. Its general and constant purpose was the terrorizing of colored people by injuring them; by injuring their families until they shall have paid the penalty for their Radicalism, and be deterred from voting at future elections.

Now, gentlemen, how much is established? That the Ku Klux Klan existed in York County; that it was an unlawful conspiracy to prevent colored men from voting. And now the serious question remains for these defendants—are they connected with that conspiracy? Remember, gentlemen, it is not necessary to prove that they killed Tom Roundtree; that they ravished Jane Simril, whipped Charles Leach, or killed Charles Good. Are they members of the Klan that had this for their purpose? If they are, they are responsible for all its acts.

Now, gentlemen of the jury, is John W. Mitchell a member of the Ku Klux Klan? It is admitted that he is. His counsel yesterday told you that, with the evidence that had been presented, he could not argue that John W. Mitchell was not a member of the Klan, in York County. Charles W. Foster knows him to be a member of the Klan; was present when he was elected Chief of the Klan, in the old field near Mrs. Wright's house. He recognized him on the Pressley Holmes raid, the same raid with which we shall soon connect him in whipping Charles Leach. But I need not refer to this testimony, because it is now admitted that John W. Mitchell was a member of the Ku Klux Klan; I have nothing under the first count, therefore, to do with J. W. Mitchell, except to take the admission of his counsel, and the proof goes to show to you that the nature and purpose of the conspiracy was such as I have described to you, and that J. W. Mitchell, as a member, is guilty upon the first count of the indictment.

Is Dr. Whitesides a member of the Ku Klux Klan? We have no witness who saw him sworn in; we have no witness

to whom he confessed, in so many words, that he was a member of the Klan, but let us see if he acted with the Klan as an active member, and engaged in at least three of its raids. We come to the testimony of Charles W. Foster, and he tells you that on the raid that whipped Charles Leach and others, he went with Dr. Whitesides to the house of Milton Watson. He details to you the circumstances.

Now, gentlemen, it is always very dangerous for a witness who is telling a false story to dwell on details. If the witness had said generally that Dr. Whitesides was a member of the order, he could not well be contradicted; but if he tells you where he met him, who was with him, what he said, he can easily be contradicted. Foster tells you that he was at the house of Milton Watson; that there, with the women of that family, they engaged in making their disguises for the Charles Leach raid; that while they were engaged, Dr. Whitesides having no saddle, he, Foster, was sent to a neighbor, whose name he gave, to get a saddle for him to raid with. Now, gentlemen, we have Milton Watson connected with that affair, and we have that neighbor who loaned the saddle. If I had been defending Dr. Whitesides, I think I would have brought Milton Watson here. I think I would have gone to that neighbor—and asked this Court to wait, and this Court would have waited—to say whether he loaned a saddle on a certain night to Charles Foster. I think I would have gone into these details, and, if my client could have shown that Milton Watson was somewhere else, and that neighbor did not loan that saddle, I think I should have done a good deal towards impeaching the testimony of Foster; but nothing of that sort is done. Watson is beyond the reach of any of us; gone, we know not where, a terrified and self-convicted Ku Klux; and, if he comes here to defend Dr. Whitesides, he comes to meet his own indictment and conviction. Mr. Foster goes on to tell us, with the details, how he met him with the saddle, where he met him, and of Dr. Whitesides

taking the saddle and riding upon it, and details the conversation about the whisky, and where they went and whom they met.

Now, gentlemen, let us look at Charles Foster, as he comes here as a witness. Both of the counsel, yesterday, dwelt upon the fact that Foster was a confessed Ku Klux. So he is. They mention it to throw a suspicion upon his testimony. But, how did Foster come into this court to testify? Why did he originally come to make known the acts and purposes of this order? If my friends can show that he was induced, by any offer that he should not be prosecuted—that any inducement was held out to him to testify—then they will have done something to destroy his testimony. Have you heard a word of anything of the kind, gentlemen of the jury? He was like everybody else in York County who had belonged to that order. He knew it was written down in the purpose of that order that, if he disclosed any of its secrets, two thousand men in York County were sworn to kill him. There were no promises of exemption from punishment offered him, and yet he comes to Col. Merrill and tells the whole truth, and comes knowing that the testimony he shall give will convict him of felony, whose punishment is the penitentiary; and he came with the pistols—two thousand loaded pistols—pointed at him, and every man sworn to kill him; and yet, he comes and tells his story; he goes to jail; he comes out of it; he meets Dr. Whitesides; he meets members of the Klan everywhere; he is badgered in jail; he is coaxed and entreated everywhere; and still he says, firmly, “When I go upon the stand I shall tell the whole truth.” “Why, Mr. Foster, one word from you will set Dr. Whitesides free?” “Have you any animosity against Dr. Whitesides?” “None in the world.” “Why, then, will you not say the word that shall set him free?” “Because, gentlemen of the jury, it is not true; he was there, and when I came to tell the Government about this conspiracy, I determined to tell the truth. It has been told; and, while I wish that Dr. Whitesides could have been left

out upon that raid, I am on my oath, and, against entreaty and against threats, I tell you, gentlemen of the jury, that Dr. Thos. B. Whitesides was there." I tell you, gentlemen of the jury, that such evidence is the strongest which can possibly be adduced. It is the confession of a self-convicted, self-accusing fellow-conspirator; done without malice—done without any desire to injure others, but simply under the solemn conviction that this whole matter shall be fully stated, under the sanction of his oath, in this court.

Charles W. Foster's testimony comes here under sanctions, such as attach to no other witness, because he comes here to brand himself as a felon—as a man who once was capable, in some way or other, of joining a conspiracy which he knew had these horrid purposes in its mind.

Mr. Foster, as I have told you, connects Dr. Whitesides distinctly with one entire raid, upon which no less than seven negroes were whipped—every one whipped because he was a Radical, or because he was a member of the Union League.

Gentlemen, let me say to you, I am not forgetting the defense in this case; I am now simply going over the evidence which the Government has presented. What else have we, gentlemen, than the testimony of Foster, connecting Dr. Whitesides with what is known as the Charles Leach raid, which commenced with Pressley Thompson and extended to Charles Leach, to Charles Good, to Amos Howell, Jerry Thompson and two others, on the plantation known as the "Beauty Spot." We have the testimony of James Crosby, a colored man, who was whipped because he was a Radical, who lived on Mr. Wm. Wilson's plantation. There had been four raids upon the Wilson plantation; it was upon the first that James Crosby was whipped; it was upon the second that Mr. Wilson was taken out of his house and threatened and injured; it was upon the third raid that Mary Robertson was whipped; it was upon the fourth that Mr. Wilson's house was surrounded and James Crosby was taken out and threatened with hanging,

but finally let off. It was upon the first raid upon the Wilson place that they whipped James Crosby. He was here, and detailed all the circumstances of his whipping; and when the question was put to him: "Did you know any of the party?" he named to you four of the men who were engaged in this whipping. They were Captain John W. Mitchell, Dr. Thomas B. Whitesides, George Leach and Ed. Leach. He says he knew them by their size and by their general appearance, by all the evidences that could come from a familiar acquaintance with men whom he had known for years. James Crosby is a preacher. He comes here without anything to impeach his testimony; without any sort of evidence that he has any animosity against Dr. Whitesides. But he tells you positively that he knew Dr. Whitesides and Captain Mitchell, and two others. The witness had no hesitancy in saying it was Dr. Whitesides and Captain Mitchell.

You remember, gentlemen, that in the third raid upon that plantation they whipped a colored woman whose husband is John Robertson. She tells us they came inside of her cabin; that there was a bright light there, and that while they staid there that she recognized their faces by the light of that fire, which were not covered. She recognized Dr. Whitesides and Captain Mitchell. Here are Ku Klux raiding in the accomplishment of their purposes, and they raise the cover from their faces, and they are the faces of these two defendants. Has this woman any motive in coming upon the stand, and, under her oath, telling you that it was Dr. Whitesides and Captain Mitchell? She can have none, but the desire to tell the truth. Remember, gentlemen, at this time the Ku Klux held full sway in York County; that their purposes was accomplished boldly; that the press was silent, and the voice of the grand jury and every public utterance of that kind was that the county was peaceful and quiet; no outrages; no disturbances; so completely had the Klan gained possession of that county. And on that night Dr. Whitesides and the Chief of a Klan

did not think it necessary to keep the disguises over their faces.

This, gentlemen, is the evidence that connects both of these men with the Klan. I do not care whether Dr. Whitesides took the oath or not. I don't care whether he knew the signs or not. Three witnesses tell you that he was on the raids of the Klan; that he participated in its acts; and that is more conclusive of his responsibility for this conspiracy than if he had sworn the oath and joined the organization and remained at home. These two defendants, gentlemen, were members of the order—one the acknowledged chief of a Klan, and the other found, on three separate occasions, acting with the order, going upon its raids and executing its purposes.

Now, gentlemen, up to this point we have said nothing about the Charles Leach raid. We have simply confined ourselves to this general conspiracy, to inquire what it was, and whether Dr. Whitesides and Captain Mitchell were members of it. We have found that conspiracy was to prevent colored men from voting; and we have found that these two defendants were connected with that conspiracy, and that they are, therefore, responsible for all the acts of the conspiracy done from the time when they first made their connection with it.

I come, now, gentlemen, to the second, third and fourth counts of this indictment, which all charge an offense committed against Charles Leach. The first count charges that they had injured him because he had voted; the second, that they injured him to prevent him from voting; and the third, that they injured him because he had voted for Mr. Wallace as a member of Congress; but they are all confined to one individual, Charles Leach.

Now, we are to see what is the evidence that connects both these defendants with this particular act of whipping Charles Leach. All that I have said about the testimony of Charles Foster, in the former part of my argument, applies here. Mr. Foster, Mr. Watson, and Dr. Whitesides go

on this raid; they meet Captain Mitchell with the members of his Klan, and they go to Presley Thompson's or Presley Holmes', as he is sometimes called, and they whip him because he is a Radical; then they go to Jerry Thompson's, and they whip him, and others, because they are Radicals; and then they go to Charles Good's upon the same errand; and then they go to Charles Leach's, and then to Amos Howell's, on the Howell plantation. I want you to remember Amos Howell, who is whipped upon the same night as Charles Leach, Presley Good, Presley Thompson and others. This is the true testimony which connects Dr. Whitesides, with Captain Mitchell, upon this particular raid; Charles Leach did not know them; he never pretended to know them, for they were in disguise.

We come now to the defense upon the case. There is no defense upon the first count, but upon the second, the raid upon Charles Leach, they attempt to prove, that upon the night on which Charles Leach was whipped, Dr. Whitesides and Captain Mitchell were both at Mitchell's house, and remained there all night. Let us see whether this is true or not. In the first place, gentlemen, the date is the important feature in this portion of the testimony. Both of the counsel who addressed you yesterday told you that the Government had fixed the date on which Leach was whipped as the 9th of January. Now, gentlemen, if that be true, there is evidence that Dr. Whitesides and Captain Mitchell were somewhere else on that night; but you will remember that both the counsel insisted that we had fixed that date. But, subsequently, Amos Howell told you that he was whipped on that night, and that he saw Charles Leach next morning, and the other victims of this raid; and it was about the twenty-fifth, twenty-sixth or twenty-seventh of January; yet they tell you that we are bound, by the testimony of Foster, of Leach himself, to the 9th of January. If they can prove, therefore, that these defendants were somewhere else on the night of the ninth of January, they cannot be convicted of the raid upon Charles Leach.

The testimony of all these witnesses is now before me, and I find that neither Charles Leach nor Charles Foster fixed the date upon the ninth of January with any certainty; that Charles Foster distinctly testified, upon his cross-examination, that he knew nothing about the date, except what he had been told since he came here. Had we known as much as we now know, we could have shown that this information came from the defendants. I don't want you to be doubtful about the testimony of Charles Leach, because if this raid is not located on the night of the ninth of January, the alibi of these defendants is gone. (Mr. Corbin here read, from the stenographer's notes, the testimony of Charles Leach.) I will read the testimony of Charles Leach. The testimony of Charles Leach, therefore, is simply that it was on a Monday night after Christmas, and he thinks after New Year; but he does not fix it upon the night of the ninth of January, and he distinctly refuses to say that it was the Monday night after Christmas, meaning the Monday night after Christmas week, which the counsel was anxious he should fix upon as the night when he was whipped. Remember, gentlemen, the claim is that we had selected the ninth of January, and fixed the date, and that we cannot say now, in view of this defense, that it was upon some other night. Charles Leach does not testify that it was upon the night of 9th of January or any other particular night in January; but simply, that it was after Christmas, and he thinks after New Year; and in answer to the questions which was to fix it as on the night of the ninth, he distinctly says that he cannot say.

Then it is claimed that Charles Foster has fixed the night as the ninth of January. Here is his testimony upon the direct examination. (Mr. C. here read from the testimony of Charles Foster.) The defense intended to prove that on the night of the 9th of January, Dr. Whitesides and Captain Mitchell were at home; and, therefore, when you come to the cross-examination of Foster, you are not surprised to find that they seek to draw from Foster, with certainty, that it

was on the night of the 9th of January, because they were going to prove that on that night Whitesides and Mitchell were at home, and there the cross-examination of Foster, with reference to this matter, naturally stopped: "I know nothing about the time, except what I have been told since I have been here." Were I to tell you, gentlemen of the jury, what Charles Foster was told and who told him, it would not be evidence, and I cannot, therefore, inform you. But this, gentlemen of the jury, is the entire evidence of Charles Leach and Foster as to the time when this raid upon Charles Leach occurred. It was essential to this defense, gentlemen, that this raid should be on the night of the 9th of January, because they have an alibi already proved for that night.

Now, gentlemen, an alibi is a swift and complete defense, but the defense have made two or three fatal mistakes in getting up theirs, and it is, therefore, utterly valueless. In the first place, they had to claim that we had fixed the night of the 9th of January; but we had done no such thing. Charles Leach does not know what night it was, except that it was after the New Year, he thinks, and Foster knows nothing about it, except what he has been told since he came here. Now, we have another witness, Amos Howell, and he says he was whipped on the night of the 25th, 26th, or 27th of January, about a week before the raid upon Mr. Wm. Wilson; and then comes Mrs. Wilson, who testifies that her child was born on the 3d of February, which fixes the time of Amos Howell's whipping, and Amos Howell knows that this was the same night on which Leach was whipped.

Now, gentlemen, what is the evidence for the defense that Dr. Whitesides was not present at this raid? Nothing but the general denial, that on the night of the 9th of January, he was sitting up with Capt. Mitchell's mother, who was sick; but what matters it, gentlemen, where these defendants were on the 9th of January? You have been told that the time laid in the indictment is of no consequence, and it is not. We give no positive evidence, except the testimony of Amos Howell, who knew that he was whipped some night with Charles Leach, and that was late in January.

Now, what was the testimony for the defense? First, W. C. Whitesides, a brother of this defendant, testifies that Dr. Whitesides was at Dr. Darwin's on that night, and that they passed by his house on their way to Captain Mitchell's. The next testimony was that of Dr. Darwin, and he, gentlemen, is connected with this organization, and you are to bear that fact in mind in judging of the value of his testimony. Dr. Darwin at first denied that he was a member of this Ku Klux organization; upon his cross-examination he admitted that he was present at a meeting of the Klan when Mr. Albertus Hope was elected Chief. Next, we have the testimony of Mrs. Howe and Miss Howe, the mother and sister of Julius Howe, whom we have proved over and over again to be a member of this order. I do not say to you, gentlemen, that they are not stating the truth, but these witnesses come upon the stand with the benefit or burden of their surroundings, and their motives and their relations. The next witness is Mrs. Whisonant, a sister of Captain Mitchell. These are the witnesses brought upon the stand to testify that, on the night of the 9th of January, these defendants were at home all night with the sick mother of Captain Mitchell; but, gentlemen, it is not enough to prove this; they must go further and show that that was the night on which Charles Leach was whipped.

Now, how have they proved that? Captain Mitchell's little son is brought here to prove that the next morning he went to the postoffice and there heard that Charles Leach had been whipped the night before. Did he see Charles Leach? He did not. Amos Howell saw him. Little Samuel Mitchell did not pretend that he saw anybody that had been whipped that night; and you must remember that he is the son of this defendant, and comes here to testify for his father. All the rest of their witnesses simply testify that they heard it from this little boy, and he heard it at the postoffice as a mere rumor. Dr. Darwin testified that on his way home, next day, he heard the rumor at Wiley's store; but did he see anybody that had been whipped, or did he see anybody that had seen the victim? He did not. And yet, gentlemen, that is the entire defense.

On the part of the Government, we present the testimony of one of the victims, and he saw the other victims the next morning, and the testimony is, that it was late in January that the whipping was done.

An alibi, gentlemen, is a good defense when it is made out; but when it fails, everything is gone! The defendants stand here to defend against the whipping of Charles Leach; and the defense is that on the night of the 9th January they were at home; whereas the full and positive evidence is that it was on the 25th, 26th or 27th January that Charles Leach was whipped.

Now, gentlemen, the case is before you, and you are now in a condition so far as my efforts are concerned, to understand this testimony, and to see how completely and beyond controversy these parties are connected with the general conspiracy which is charged in the first count of the indictment, and how, by the positive and circumstantial testimony of Charles Foster, a witness entitled to the utmost credit, Dr. Whitesides was a member of that party who raided upon Presley Holmes, Chas. Good and Charles Leach, on the night of the 25th, 26th, or 27th January; while everything that can be brought here to turn your minds away from the necessity of a conviction for whipping Chas. Leach is that these defendants were, on the night of the 9th January, at the house of Mrs. Mitchell.

I called your attention, gentlemen, to the ease with which this story of Charles Foster could be disproved. It is circumstantial—it gives details—and if it could be contradicted, the witnesses to do so could and would have been brought here. I have not the heart, gentlemen, to dwell upon the attempt on the part of the defense to involve Charles Foster in some contradictions with reference to his identification of Dr. Whitesides as a member of a party that raided upon Charles Leach. We have the testimony of Robert Riggins and John S. Miller that when Foster left the jail he told Dr. Whitesides, in response to his inquiry, that he was going to Colonel Merrill to correct the mistake he had made. But I must call your attention, gentlemen, to these witnesses—Robert Riggins and

John S. Miller. Who are they? If anybody was ever stamped upon his face, before his lips broke into speech, as a natural born Ku Klux, it was Robert Riggans; he is a Ku Klux, and was elected Chief of the Klan at Sharon Church. John S. Millar says he is not a Ku Klux, and yet confesses that he attended the Sharon Church meeting; and Elias Ramsey testifies that he was at the Sharon Church meeting, and saw John S. Millar. These are the witnesses who come here to prove to you that Charles Foster said that he would correct his mistake about Dr. Whitesides. We could not, gentlemen of the jury, exclude them from the witness stand, but you, gentlemen, can exclude them, and you are bound to exclude every man's testimony who is proven a member of this conspiracy; and I go further, and I say that you are bound to disregard any witness who comes upon this stand, who is known to have a connection with this order, which would tend to induce him to give evidence in favor of those who are charged with this conspiracy.

Now, gentlemen of the jury, Dr. Whitesides and Captain Mitchell, it is said, were good men. I hope they were. Whatever there may have been of good in the past of these men's lives, let them cling to it, let them hold fast to it, for their character, from this hour, is gone. Men of intelligence and education, they have associated themselves with a stupendous conspiracy that has now come to light, and that only awaits your verdict to meet its doom. You stand face to face, gentlemen, with two men who are members of that conspiracy, and who have as little claim to your sympathy, under any circumstances, as any two men who could be singled out from this vast organization in the whole country; and on this occasion, and in arriving at your verdict, you can certainly not be persuaded to anything less than a verdict of guilty upon all these counts against these two defendants.

A jury is always the last and highest protection of a community. You are bound to remember, gentlemen, that you are the final defense of the liberties of every man; and you are not to raise any question about the propriety of punish-

ing these two men because you have hearts of pity and of sympathy for individuals; but you are bound to raise yourselves to the height of your responsibilities, and to remember that you sit here to protect the rights of the entire community, and that your verdict is to be made up under the solemn responsibility, from which you cannot escape, to save the rights of the entire colored race, and to vindicate the claim of our country that we are enlightened and civilized, and that we live under a Government which protects alike the great and the feeble; which bestows rights and defends them; which clothes a whole people, once slaves, with complete freedom; and never pauses until that freedom has been made secure against every attack and every conspiracy.

THE VERDICT AND SENTENCE.

The jury, after a brief charge from the Court returned the following verdict: On the first and third counts of the indictment—*Guilty*. On the second and fourth counts—*Not Guilty*.

JUDGE BOND. John W. Mitchell, what have you to say in mitigation of your punishment?

Mitchell. Well, I don't know hardly what to say; if I was educated, so as to explain myself, I would be glad to do so, but as I have but a poor education, I don't know how to express my desires; I don't deny I belonged to the organization, and never have since I attached myself with it; when I was threatened before hand, I thought that, for to save myself, I better get into it, and on the 28th or 29th of December last I joined the organization, betwixt Christmas and New Year's. The day that I joined they appointed me chief; they said they wanted a man that was sober and discreet, so as to not allow anything to be done out of the way, and I accepted the office as chief in my neighborhood; I never have issued an order to them at no time; was with the Klan on two raids that was started to be made, but prevented them from going; didn't let them go; the raid I am accused of being on, down at my house, I wasn't there; I think I showed to the Court, satisfactorily, that I was not there. The evidence I produced in court, and it is not worth while for me to state anything about that matter, because I know nothing about it. I remained in the order till the 25th of February, and I left it, and hadn't anything to do with it after the 25th of February. I had a disguise, and on Monday morning, the

25th, I burned it up; I told my wife; she had advised me to quit it; I told her I would take her advice, and leave it and have nothing more to do with it. I would be glad for the Court to be as lenient as possible, as I have a wife and seven children—my largest you saw here on the stand. I have a son that is married that I do not consider as my family at all at present, and I have an afflicted mother, and me and my son is the only support that she has. My next two largest children are daughters. The raid that they were going to make on Wm. Kell, I heard of; I didn't order the Klan out; I heard that they were going to make a raid—I think that was Monday night; I heard it Monday about 12 o'clock—and I went to the meeting place and begged them to not go; that it was not right to do so; and if Mr. Kell had been able to give in his evidence here, he would have showed the Court that there wasn't any hard words or hard feelings betwixt him and me that night; that is Mr. Hugh Kell. It was spoken of by some of the party, I don't remember who, that they thought it would be well for Mr. Foster and Mr. Hugh Kell and Mr. Wm. Kell, all to be killed, and I opposed it; I told them it wouldn't do to take the life of any one; I opposed any such means whatever, and Mr. Foster told me himself that he would have been glad to have gone on and got sight of Mr. Kell; if he had, he would have killed him; I told him that he was wrong, he oughtn't to do that. And then, on the York raid—I heard that when I was about nine miles from home, going to church—I turned around and goes back home, thinking that the man who had been put in charge, instead of me, would order out the Klan, and I went back home to propose, if it was ordered out, to go and stop that raid.

When I got to where they met, they was just coming out onto the big road. As I rode up, I went on talking to one another until we got down to the mill, and I persuaded them to make a halt—which they did—and I talked to them and tried to convince them that they were wrong; and after a while, there was two other small Klans came up, and asked what we was doing there. I just replied that I did not think that anybody had any business in Yorkville that night; and I told them, as for myself, I am going back home—the rest of you can do as you please. I have been talking to you, and if you are not willing to take my advice, go your length. I got on my horse and turned round—and I was branded with cowardice. I heard the next day, from a young man of the party, that they had threatened me for not going on to Yorkville, and I got him, myself and my son, and was prepared for a week or ten days afterwards for to meet them—provided they came on me.

JUDGE BOND. It appears to the Court, from the testimony that has been taken in this case, that you were a very prominent man in that neighborhood, and all these young men and ignorant people had a right to look up to you for direction;

and then you were a chief of a Klan, and from you all the orders came; you were a man of property and position; you had an opportunity to know the transactions that were going on because you were a chief; you had better means of information than those men had, who were always accustomed to follow the prominent people in their particular section of country. Knowing all this, hearing of the ravishing, murders and whippings going on in York County, you never took any pains to inform anybody; you never went to the civil authorities, and you remained a chief till they elected somebody else.

The Prisoner. I was afraid to do that, for fear of my own life.

JUDGE BOND. You were afraid of your own life from the very institution you set on foot. You have appealed for mercy on account of your family, and it is proper that you should appeal to the Court on that ground. But you never thought of the families of these other people. Men were taken out and murdered within sight of their wives, and men were scourged, and their wives scourged, by this infamous organization, of which you were a chief. The judgment of the Court, in your case, is that you be fined one thousand dollars, and that you be imprisoned for five years.

JUDGE BOND. Mr. Whitesides, what have you to say to the Court?

Thomas B. Whitesides. I have not got anything. What I could say has been proven to you; I cannot say anything more; I can say that I did not belong to the order, and never did, and was always opposed to it. About that Charles Leach raid, I wasn't on it. I was at John W. Mitchell's the night this raid was charged against me.

JUDGE BOND. That has been found otherwise by the jury. The Court has got the impression that you were not prominent in this matter. It has never been shown that you took a part in any of these raids, and any participation that you had, it appears, was not active. A man of your position in that county, having a knowledge of these facts, might have communicated them to the authorities.

The Prisoner. I couldn't do any more, sir, than what I did do.

JUDGE BOND. You might have had some of these people punished. This extraordinary Act of Congress, under which jurisdiction has been given to the United States courts to punish these things, would have been perfectly useless, if gentlemen in your position in York County, having found out what was going on, had united to put it down. It seems that the people preferred to live in amongst this outrageous Klan rather than under the government of law. Seeing the little connection which appears from the evidence that you had with it, the judgment of the Court is, that you be fined \$100, and be imprisoned one year.

THE TRIAL OF JOHN S. MILLAR FOR CON- SPIRACY, COLUMBIA, SOUTH CAROLINA, 1871.

THE NARRATIVE.

John S. Millar was proven to be a member of the Klan, and he was charged with taking part in the general conspiracy to keep the negroes from voting at elections by whipping them and intimidating them in other ways. His plea was that he was not really in sympathy with the organization, but went with it because all his neighbors did; that otherwise the negroes on his plantation would not be protected. His witnesses substantiated his story and though the jury convicted him, the judge was very lenient, sentencing him to a short term in prison and a small fine.

THE TRIAL.

*In the United States Circuit Court, Columbia, South Carolina,
December, 1871.*

HON. HUGH L. BOND,
HON. GEORGE S. BRYAN, *Judges.*

December 27.

John S. Millar had been previously indicted by the grand jury for conspiracy to prevent negroes from exercising the right to vote, the indictment containing but one count.

The *Prisoner* pleaded *not guilty*.

D. T. Corbin, U. S. Dist. Atty., and *D. H. Chamberlain*, for the United States.

Mr. Wilson, for the *Prisoner*.

The following jurors (all negroes with the exception of the foreman) were sworn:

John Nott, Phillip Salter, C. H. Bankhard, foreman; Joseph Keen, Joseph Smith, Cyrus Alston, William Smith, John

JOHN S. MILLAR.

Freeman, Henry Fordham, Joseph Munnerlyn, John A. Pugh, E. Johnson.

Mr. Corbin. Gentlemen of the Jury: I desire only to offer you one word of explanation in reference to the cause that will be presented to you. The indictment which has been read to you contains but one count. We shall show to you: first, that this defendant is a member of the Ku Klux Klan; that he was present at two meetings of the Klan. We shall show to you the nature and purpose of the Klan; how they were to be carried out, and how, finally, they were carried out, by whipping and killing the colored members of the Radical party; practicing all sorts of atrocities upon them; and committing all crimes known in the catalogue of offenses, and this for the purpose of hindering, preventing and restraining them from exercising the right to vote.

THE WITNESSES FOR THE PROSECUTION.

Elias Ramsay. Live in York County; know the prisoner; I was a member of the Ku Klux Klan; Chambers Brown swore me in at Hickory Grove; (the constitution and by-laws of the Ku Klux Klan organization were here read, see *ante*, p. 615); that is the oath to which I swore when I was initiated; was at one regular meeting of the order, when they met to elect officers; Squire Samuel Brown was there; also, Chambers Brown, John S. Millar, Napoleon Millar, Samuel Ferguson, William Sherer, James Sherer, Hugh Sherer, Sylvanus Sherer, Hugh Kell, Banks Kell, Sherod Childers, Robert Riggins, Henry Warlick and Robert Hayes Mitchell; that meeting was at Sharon Church; the meeting was called to elect a chief; Robert Riggins was elected chief.

The general purpose of the Ku Klux order was to keep the Radi-

cal party from voting by raiding amongst them in the night time; when on these raids they were armed with pistols, and had disguises on.

Never was on but one raid on Jim Williams; we met about Squire Wallace's about ten, about nine in number; were joined by another party of about twenty-five. Shortly after we struck the woods heard them say they were going to hang Jim Williams; the crowd got off their horses; the front part of the crowd went off through the woods; they were gone half an hour; presently Hugh Kell and John Caldwell came up; while they were absent heard something like the voice of a woman in distress; they mounted their horses and started. James Neil said to me that some men were powerful hard-hearted.

William Wilson said he want-

ed five or six men to go to J. S. Bratton's house; I was one of them that went; we went into the piazza and hollowed; at last he came out in his underclothes; they asked him what he meant by so many guns being on his place; that if they caught any more guns on his place, they would hold him responsible; he said he didn't own all the black people, and to hold him responsible, it was not right; he also said he had not voted the Radical ticket. We then left.

Chambers Brown said, if these niggers didn't leave they would go like Jim Williams—that he was hung for his principles; said he was an old Radical amongst the niggers down there, and that he consumed a great deal of time mustering with his company.

Cross-examined. Did not see John Millar sworn into the Ku Klux; never saw him on any raid of the Ku Klux; saw him at Sharon church the night the company was organized. The Ku Klux didn't allow a man in without he was going to be a member.

It was not safe in that neighborhood at that time for any one to oppose the Ku Klux. I went into it, sir, for protection; from what I was told I thought I had better go into it.

Never saw Mr. Millar with a disguise on.

Andrew Kirkpatrick. Know prisoner; seen him at one meeting at Sharon last spring at Sharon Church. They elected Robert Riggins Chief; Pol. Miller as Turk, and Chambers Brown as Monarch. He acted pretty much the same way the rest did. Attended one other meeting of the Klan at Sharon; the night that we had the last

little ride ten days after the other meeting, prisoner was at that meeting too. We got on our horses, and went to Elias Ramsay's; brought Charley Russel out—a colored man living with him—and made him dance a little because he had made his brags that the Ku Klux could never catch him, so we thought we would slip up and show him that we could catch him, and made him dance a little. Have been on three raids. Was in the Jim Williams raid.

Cross-examined. Never saw Mr. Millar with a disguise, nor with a pistol, nor with the whistle that the Ku Klux carry; never seen him on a raid; have heard Mr. Millar was taken to that first meeting by his cousin, Napoleon Millar, and went out of curiosity to see what it was. Never knew him to take part in any case of violence committed by the Klan.

John Ramsay. Know this prisoner. I was a member of the Ku Klux, initiated in 1868, at Yorkville. The last meeting I attended was at Sharon Church last May. There was two of Mr. Brown's sons, Alonzo and Chambers, John S. Miller and Napoleon Miller and Dan Carrol, my brother Sam, Andy Kirkpatrick, Robert Riggins and some of the Shearer boys.

Sam Ferguson. Joined the Ku Klux in York County last spring; attended one meeting of the Klan at Sharon Church. There was Bob Riggins, and four Shearer boys, and Hayes Mitchell and Mr. Brown—Chambers Brown and Pol. Miller and John S. Miller, and my brother and Bob Harkness.

Thomas L. Berry. Was ini-

tiated into the Ku Klux last January at Wesley Smith's. My notion was of the meeting of the Klan that it was to terrorize the party in power and build up the other party. It was to be done by whipping and killing the members of the Radical party; know one man killed—Charley Good.

Lawson B. Davis. Have been initiated as a member of the Klan. The object of the order was certainly aimed at the Republican party. The only meeting that I attended, the propositions brought before the Klan were that persons who were prominently connected, colored and white, as leaders in the Republican party, members of the Union League, or officers of the League, were to be visited and told that they must discontinue their connection with the party. That was the first visit. The second visit these persons were to be whipped, in case they didn't discontinue their connection on the second visit. The third was a request to leave the country. In case they refused to leave the country, then they were to meet the penalty of death if they continued in their course; the purposes of the order were carried out in one instance, in my knowledge. Charley Good was whipped a while before he was killed about the middle of January, and he came over to my house and showed me his wounds.

He said then that he was whipped for his Radical principles. He says they had nothing else against him but his Republican principles. He then said to me, that it didn't change his principle, that he would vote the Republican ticket again if the

opportunity was ever presented to him. I told him I thought that assertion had better be kept to himself, but he made the assertion in the presence of two or three colored men.

A short while after that he was killed. The parties who done the murder were William Smith, Wesley Smith, in connection with William White and Leander Spencer. These men, Spencer and White, didn't tell me that they assisted in the murder, but William Smith and Wesley Smith both told me that they took part in it. He was killed on Wednesday night. That day he worked on Roland Thompson's plantation, and this party had watched him that day and waylaid him in the road as he went home; shot him, and then finished him.

I don't know anything particular against Charley, more than his principles. He was rather defiant in his course, however—he was determined—didn't seem to care who knew his political principles. In his own neighborhood I considered that he had some influence; how far it extended I don't know.

Kirkland L. Gunn. Have been a member of the Ku Klux; the purposes of the order was against the Radical party to be carried out by killing the men who were in office, whipping the voters, so as to intimidate them, to keep them from voting for men to put them into Radical offices; have attended meetings of the Klan; never knew of any person being allowed to attend meetings of the order who was not there for the purpose of being initiated, or because he was a member of the order.

December 28.

Charles W. Foster. Reside in York County, and have been a member of the Ku Klux, there the purpose of the order, as I understood, was to put down Radicalism, by whipping and killing out the members of the Radical party; the Klan is bound by oath to secrecy; no one is allowed to enter the order unless they are members; the penalty of divulging any of the secrets of the organization is death! death!! death!!! according to the constitution; persons who were not members of the order were not allowed to attend its meetings, and there were

sentinels, always, at their meetings, to keep away those who were not members.

Cross-examined. Belong to Captain J. W. Mitchell's Klan; never was present at a meeting of Brown's Klan. Know Chambers Brown; have seen him on raids; on the Bill Wilson raid, when seven or eight colored people were whipped; do not know any difference in regard to the usages of the Klans and their object; Brown's Klan and Mitchell's Klan were the same in their purposes and objects, and the members of the different Klans regarded themselves as brethren.

THE WITNESSES FOR THE PRISONER.

Daniel McClure. Live in York County with Mr. John Millar, the prisoner. I went to live with him last January; the Ku Klux came twice to Mr. Millar's house; Mr. Millar went into a room and hid when we heard them; am not sure the men were disguised; don't think the horses were white, but they were covered with something white; don't think Mr. Millar was in favor of the Ku Klux organization; told me he was scared of them; don't think Mr. Millar had a pistol or a Ku Klux gown; Mr. Millar was regarded by the colored people as a friend and a man of kindness and fairness towards them.

Edward Ross. Live on Mr. John Millar's plantation; don't know that Mr. Millar ever interfered in any way with the voting of the colored people; I voted the Radical ticket, and Mr. Millar knew it, and never tried to induce me not to

do it; don't think Mr. Millar voted in any way; Mr. Millar's reputation among the colored people for fairness and kindness was very good. Mr. Millar talked as though he was opposed to the Ku Klux organization.

Daniel Carroll. Have known Mr. John Millar fifteen years; think he was in favor of the Radical party; he had a great many hands to work for him, and it was necessary he should favor the Radical party or his hands would have run off; know of Mr. Millar's being present at the last meeting of Sharon Church; was there with him, and his object was to find out the purposes of the organization; my object in going there was to save my own bacon and my hands' too; think Mr. Millar went there to save his hands; have heard him say he went there to save himself and his colored hands that were working under his con-

trol; knew he was opposed to the Ku Klux organization.

Cross-examined. Was opposed to the organization, though I attended one of its meetings; was obliged to join the organization; voted the Republican ticket; thought it better to join the organization; they had whipped and hunted a great

many people, and they were putting cards in the paper that they were not Radicals, and it was to prevent more mischief being done that I joined the organization; had been a soldier in the Confederate service; admit that I joined the society and took the oath, but it was to protect myself and my colored bands.

MR. WILSON FOR THE PRISONER.

Mr. Wilson. Gentlemen of the Jury: My duty, as the attorney for the prisoner, requires that I should present his case in accordance with the real position that he occupies, and in the light of the evidence which he has produced before you. And from that standpoint I am satisfied that he was a Radical; that he sympathized with the Radical party; that he never contemplated or desired to join in any combination whatever to prevent the colored citizens from voting in any election. That his true motive, in being present at the Sharon meeting house, on the first of last May, and, on another occasion, about a week after, was simply as a witness upon the stand said, to protect himself and to protect the colored men in his employment. The evidence shows that he went there, not as a conspirator against the rights of the colored people, but to protect the colored people and himself. I submit to you, in perfect frankness and candor, as the truth of this case, that the prisoner was not only not a Ku Klux—that he was not engaged in this conspiracy—but that he was opposed to it, and that he was a Republican, and a sympathizer with the Republican party. And I will leave you, when I get through, to look over the testimony and see whether that is not, on your oaths, the truth of this case.

Much has been offered, in the way of testimony, to show what was the object of this Ku Klux conspiracy; what has been its plans; and what were the acts committed in carrying out its object. It will be contended that it was a conspiracy to prevent colored people from voting in October,

1872; and that each member of that conspiracy is responsible for the acts of the conspiracy; that, because the prisoner was present on two occasions at Sharon meeting house, therefore, he was a member of the Ku Klux conspiracy; and, therefore, you ought to find him guilty. That will be the line of argument pursued by the counsel who is to reply to me. Gentlemen, it is not the duty of jurors to listen only to the case as presented by the counsel for the Government. They, of course, have their duties to perform—and you have yours. Your duty requires you to listen to both sides, to form your judgment upon the evidence in the whole case, and not to decide this case as if it had been only proven that John Millar was present at a meeting of the Klan on one or two occasions. For there is further evidence in the case. Had the evidence stopped there—had there been no witnesses to prove that he was there for a legitimate purpose—the counsel might, with great force and justice, say that he joined in this general conspiracy. But when witnesses come upon the stand, sworn to tell the whole truth, and when the jury go into that box, they are to decide by the whole evidence in the case. Now, the question before you is, simply, not whether Mr. Millar was present on these two occasions, but why was he there? What did he go there for?

What is Mr. John Millar indicted for? There is but one charge against him. The grand jury have ignored and thrown out the other charges that the Government counsel had placed in the indictment. The only count on which they have found a true bill is, did he conspire, with divers other persons with intent to violate the first Section of the Act entitled "An Act to enforce the rights of citizens to vote," etc., approved May 31, 1870? Did he conspire with intent to prevent colored people from voting in October, 1872?

The first question for you to determine is whether his presence at Sharon Church, upon those two occasions, proves positively that he was conspiring to violate the first Section of that Act; for that is all he is tried for. Is it only possible

for him to be there for that purpose, and no other? Is it possible that that shows his whole intent, and that he had had no other? His intention constitutes the essence of the thing. When a man is tried for crime his intention is the essential point. The language of the indictment is that he intended to violate the first Section. You have to decide from the evidence what his intent was. He was not himself allowed to go upon that stand and swear what his intent was, but Mr. Daniel Carroll, who went with him, tells you what his intention was; tells you that he was a Republican, and voted the Republican ticket. He tells you that he went to those meetings to save himself from the violence of the Ku Klux organization, and to protect the colored people in his employ.

The witness says that he talked this matter over with Mr. Millar, who told him that that was his object. This is the testimony of the man who went to that meeting with Mr. Millar. Mr. Millar is shown to have been afraid of the Ku Klux. Why did they visit him at night, during the third week of March, in that same spring? They went to his house at night in disguise. They called for him, and the captain of the road, Daniel McClure, a colored man in his employ. Does not that look as though the Ku Klux intended to visit some punishment upon Mr. Millar? Does it not show that they were both alarmed and fearful of this organization. And you will remember that they enquired for three men, all of whom were known to be members of the Radical party. It shows that they placed Mr. Millar, and the colored man, Dan McClure, all in the same list; and the Ku Klux raid was upon the whole of them. Is not that a circumstance to show what Mr. Millar's intention was in going to Sharon Church?

Again, Dan McClure was the captain or overseer of the road, and he was appointed by Mr. Millar's influence. It appears, further, that the guns belonging to the colored people were in Mr. Millar's charge. How did they come there? They were placed there by the colored people, to

prevent the Ku Klux from getting them and breaking them up. Does that look as if he was conspiring against the rights of the colored people? Then, again, his reputation in that county for kindness and fair dealing towards the colored people was universally good; he was regarded by the colored people as their friend; that was his undisputed reputation. And how does he act? When Ross, the colored man, speaks to him about going to the election to vote, he does not attempt to prevent or dissuade him from voting the Radical ticket. Does he not say that if he voted, he would vote the Radical ticket? This is not the conduct of a member of a conspiracy, whose object was to prevent colored people from voting. The Government may reply to this, that he was present at two meetings of the organization, and that, therefore, he is guilty. I deny it; and I deny that that is the law. The true question for you to determine is, what was his intent in being there? Was he a part of this conspiracy; Was he aiding in it? Was he favoring it? Did he not rather go there solely for the purpose of protecting himself, and the hands in his employ?

Now, the mere fact of Mr. Millar being there proves nothing. He might have been there as a detective, on the part of the Government. His presence there would then not have been criminal, because his business would not have been criminal, and his intent would not have been to violate the first Section of that Act. Now, I contend that Mr. Millar might have been there simply as a detective, with the simple object of protecting himself and the colored people in his employ. And there is much to confirm that. It will be your duty, gentlemen of the jury, to examine the whole evidence in this case. I know that I am addressing a jury, who, with the exception of the foreman, is of a different color from the prisoner; but, in the name of all that is just, in the name of all that is due to humanity, in the name of that consciousness that we have of the presence of Him who witnesses the actions of every tribunal that claims to administer justice and enforce the law, based upon

reason, equity and humanity, I ask you to dismiss all prejudices about race and color. We are creatures of the same God; we are all amenable to Him and to His laws; and I ask you now, upon your oaths, is there any incident, in this whole case, to confirm the position that Mr. Millar was not there simply with the intention of protecting himself and the colored men in his employ? Did he ever have a Ku Klux gown? No. Did he ever have a pistol? No. Did he ever go upon a raid? No. If he was a member of the organization, and an active member, he was bound by the constitution to have a pistol and a gown; to go upon its raids, and obey its orders. Is there any particle of proof that he did any of these things? The very witnesses put up by the Government tell you distinctly that they never saw him on a raid, or in disguise, or with a pistol or a signal instrument. All that they do is simply to prove his presence at a meeting, on two occasions, at Sharon Church.

[*Mr. Wilson* here reviewed the testimony of the Government witnesses, *Elias, Ramsay, John Ramsay and Charles W. Foster*, whom, he contended, merely proved the presence of Mr. Millar at two meetings of the Ku Klux organization, and did not prove that he had been sworn a member of the order, or had even participated in any way in carrying out the purposes of the organization.]

The first question (*Mr. Wilson* continued) for the jury to decide is whether there was any criminal intent, on the part of Mr. Millar, in going to those meetings of the Klan. Do you not feel, gentlemen, perfectly convinced that there was no criminal intent, or any intent to violate the law under which he is indicted? And, if he went there simply to protect himself and his colored hands, what, I ask, has he to do with this long list of acts of violence, respecting which so much testimony has been offered on the part of the Government? Admitting that there have been acts of violence, he has nothing to do with them, and he is not guilty, according to the evidence, of any conspiracy to commit those acts.

And all this, gentlemen, should not be allowed to influence your minds against my client, for he is not responsible for acts with which he has nothing to do. Mr. Millar was at those meetings simply to disarm the hostility of the Ku Klux against him, and to ascertain, if possible, if they intended to harm him or the negroes in his employ. Why should all this testimony be offered in reference to the purposes of the organization? I suppose it is simply with the view of showing that there was a conspiracy to prevent the colored men from voting in 1872. Supposing it were so; I contend this had nothing to do with my client if he was not a member of that conspiracy, and did not join it with a guilty intent. If he went to that meeting with an innocent intent, and if he did not go there to promote this conspiracy, but to protect himself, then he ought not to be punished.

If you have any doubt as to his intention in going there, you certainly ought to give the prisoner the benefit of that doubt. If you cannot, the Court must pronounce sentence. His fate, therefore, rests entirely upon you. He is at your mercy. I cannot see why he should be offered as a victim upon the altar. It certainly would be no sacrifice to justice. Suppose you convict him; suppose you entail an imprisonment upon him, which one of you, gentlemen, can point to a single word that has ever been uttered by this prisoner; which one of you can put your finger upon a single act that he has committed, that would justify you in punishing him, and that would satisfy you that he should be subjected to a penalty of that sort? You are to look to the entire evidence, gentlemen; because, if you convict, the Court must punish. His fate is in your hands, and I again ask you to look over the whole of the testimony and answer the question. Are you not satisfied in your hearts that this man was a Republican in his sympathies and his acts; that he was simply taking care of himself and of the negro hands in his employ, and that he had cause to fear the Ku Klux; that he was really opposed to the organiza-

tion; and that his presence at those two meetings was simply an act of precaution and self-defense? Are you not satisfied that that was his intent, and not to violate the first Section of the Act under which he is indicted? I ask you to decide these questions after looking over all the evidence, and not simply confine yourself to the one point proved by the Government, and the one position taken by the Government—that he was present on two occasions when this Ku Klux Klan met.

I ask you, gentlemen, in conclusion, to dismiss from your mind any prejudice, if any should exist, of race and color, and to do justice to this man. The passions, the excitement, the strifes and prejudices of this fleeting life are soon ended, and none of us should forget that we must account hereafter for all our actions here.

MR. CORBIN FOR THE PROSECUTION.

Mr. Corbin. The prisoner at the bar is charged, that he, with others of York County, did unlawfully conspire, with intent to violate the first Section of an Act to enforce the rights of citizens of the United States, to vote in the several States of this Union, May 31st, 1870.

[*Mr. Corbin* here read the indictment.] We first notice, gentlemen, that he is charged with being in a conspiracy for the purposes indicated in that Act. The Court will tell you that a conspiracy consists in the agreement, the entering into a combination to do an unlawful thing; it does not consist in the doing, but simply in the agreement to do it. This definition has been heard, over and again, in this Court, and it is a proposition that does not admit of dispute. If you read the indictment carefully, you will see, it only charges him with conspiring to do the unlawful thing. That is the offense, nothing more and nothing less.

Such combination and such conspiracies are prohibited by law; and the only question, gentlemen, for you to inquire about in this case is, did this defendant enter into such an agreement and such a conspiracy.

IX. AMERICAN STATE TRIALS.

How do we show, gentlemen, that he is a conspirator, and that he entered upon this conspiracy? In the first place, we put the members of his own Klan upon the stand, who swear that he attended the meetings of the Klan; that he took part like the rest of the members, and they do not attempt to deny it. Here, gentlemen, you have a secret, oath-bound society, or organization, that does not permit any stranger to be present at its meetings or to know its secrets, any more than it permits any of its members to tell the secrets forbidden, under penalty of death. The rules of the organization are all alike, and all the Klans declare that any man who reveals any act of the order shall suffer death at the hands of his brethren. Now, gentlemen, this is the testimony of all the witnesses who have been put upon the stand. Even the witness for the defense, (Mr. Carroll) says: "I could not go into the Klan without being a member of it, and I don't know anybody that could."

There cannot be, gentlemen, a particle of doubt upon that question. When we see a man filling an office, exercising its functions, we say at once that he is an officer and, if he acts as an officer, his acts are valid, so far as the public are concerned, though he may not, in reality, be an officer at all. Mr. Ramsey, Mr. Davis, Mr. Gunn, Mr. Foster and other members of the Klan, all testify that no one could attend meetings who was not a member of the order; and Mr. Kirkpatrick says: "I not only saw him there at one meeting, but I saw him there at two meetings." Can there be any doubt of his being a recognized member of the Klan, in full fellowship with them, and in full possession of all their secrets, with a full knowledge of their purposes, and fully advised of all that they intended to do, and all that they were doing? So this defendant holds himself to that Klan as a member. Do you suppose, for one moment, that that band of conspirators, who had been present at murders, who had gone on midnight raids, who had again and again whipped colored people in York County—do you suppose they would have permitted this man to be present

if he had not been a member of the organisation, and if he was not known to be a member?

Do you suppose, gentlemen, that you or I could have been present at the meetings of that Klan? We might have done it, gentlemen, but we could never have come back here again! And, this is true of the prisoner, John Millar; if he had been admitted to the meetings of that Klan, and it had been ascertained afterwards by anybody that he was not a member, would they not have "gone for him," in the expressive language of that county? I tell you they would; and there would have been no John Millar to try here today. The witnesses, Ramsay and Ferguson, also saw him at the meetings of the Klan. Thus, four men of that Klan, who were present, saw him; two of them saw him there, at different meetings; others saw him at one. Did he not hold himself out to the Klan as a member of that organization? He did, and there is no denying the fact. Why do they not produce some witness to testify that they knew he was not a member?—that he was allowed to go there as a sort of honorary member, or visitor? Because, gentlemen, if it was not so, he could prove it. There are members of the Klan in this court, and there is no objection to their going upon the stand to swear to that fact, if it be a fact. Why do they not do it? Because it is not true. They know that John Millar could never have gone there had he not been known to be a member of the Ku Klux Klan. He was present at their meeting when officers of the Klan were elected—a monarch, a turk and a committee. Witnesses testify that, though they did not see him vote, that when the members separated into lines to vote for the respective candidates, they did not see him stand on one side and not vote. Well, gentlemen, he could not have taken part in these important operations of the Klan, had he not been a member.

It was suggested, on the other side, that he might have been there as a Government spy, to find out what the Klan was doing. This suggestion is not serious. But if so, he

could have told me, or some representative of the Government, that we might have prosecuted so infamous a conspiracy. Such a supposition is not for a moment to be entertained. If he had been there by accident; if he was there not to join in its proceedings, there would be some evidence of it. The burden of proof is upon him. When I see anybody operating with a band of murderers, operating with men guilty of all the crimes in the catalogue, meeting with them night after night, what is the inevitable presumption? Why, that he is one of them; that he belongs to them; that he co-operates with them; that his sympathies are with them. No truer saying, gentlemen, ever passed into a proverb than that "A man is known by the company he keeps." This was the kind of company that John Millar kept; this is the kind of association John Millar selected.

Then, gentlemen, the witnesses tell you that he was present at a meeting when the Klan went upon a raid; but he, having no disguise, went home. Was he not in the secrets of the order? What did they kill Charlie Good for? for the simple reason that he knew some of them who had whipped him. This shows what the Klan will do to any one who knows the purposes of the order. They will kill him; and this is what they would have done to Millar had he not been a member of the order.

It seems to me, gentlemen, that the testimony is so overwhelming that there cannot exist any doubt in your minds; and, therefore, he is guilty of the conspiracy with which he stands charged.

Gentlemen, I leave the case with you. I feel that further argument, or further reference to the testimony, is unnecessary. If you feel, gentlemen, as I feel when I have heard these awful tales of murder, rape, arson, that you can never forget them, and can never banish them from your minds—either in your hours of sleep or in your hours of wakefulness—I know you will thank me not to repeat them. The horrible tales that have been told us from that stand,

in carrying out the purposes of that organization, are really far too terrible either to be forgiven or forgotten.

THE VERDICT AND SENTENCE.

The COURT then charged the jury more briefly, but to the same effect as in the preceding trials.

The *Jury* then retired; and, on their return, rendered a verdict of *guilty*.

JUDGE BOND. What have you to say in mitigation of your punishment?

The Prisoner. I have not anything, only to tell you how I came to be at the Sharon meeting house. A cousin came to my house, and told me to come and go along with him. And when we went there, he told me there was something powerful to be done, and I asked him what it was. He said there had been a man divulging some secrets, and they was talking about shooting him. And I told him I didn't want to go in any such a concern as that. He said come and go along; and he told me, if they asked "Who comes there?" to say "A friend." Well, we went, and they never said anything like that at all. I hitched my horse, and went in and spoke to them, and never let on but what I was a member of the Klan. They said that Andy Kirkpatrick had been telling some tales to Dan Carroll, and they commenced talking about shooting him; and Squire Sam Brown, I think, was there, and he got up, and so did I, and told them that such a thing as that oughtn't to do any such a thing, because there was Andy, and no person to depend on but his old mother for a living; and they concluded that it wouldn't do; that may be Dan Carroll was telling a lie. When I saw Dan Carroll, I told him: "You best get in the order, for they said about your being a Radical, anyhow, and it is best for you to go and get into that thing;" and I told him it would be best to know something about it, for we wouldn't be obliged to go on a raid and they wouldn't hurt our hands. When I went there, the next night, it was in the session house, and I took him; and when I went in, I told them about having Dan Carroll with me, and they commenced cursing, and said I oughtn't to have brought him there; and I said: "Dan is a good fellow, and there is no danger of him telling anything." And he went in the house, and they knelt him down and swore him in; but I never was sworn in, and I told Major Merrill them very things the first time I ever went up to him.

JUDGE BOND. What do you mean by joining to keep them from ruining your hands?

The Prisoner. They had been to my house once before that, and there was a colored man with me—a captain on the road; and they came there once; and they came there and hollered for me and him, and we slipped out in another room; and it wasn't a week before they came there again—but he never told that on the stand.

JUDGE BOND. What did they want to run them away for?

The Prisoner. I don't know anything about what the object was; I reckon because they had been voting the Radical ticket. They went to all the white people that were Radicals and done something. I always was opposed to the thing, but I know'd they didn't believe me. There was a mighty lot that got away, and I know when I didn't do anything I didn't want to go away.

JUDGE BOND. Why didn't you inform on these people?

The Prisoner. Who would you want to in that country? There wasn't a man what was Radical but had his card in the paper. Now, who would I want to. Nobody in that County has been punished for these things. There was no Trial Justice to go to.

JUDGE BOND. The Court is of opinion that you are the least guilty of the parties brought here. They will sentence you to a fine of twenty dollars and imprisonment for three months.

**THE TRIAL OF EDWARD T. AVERY FOR CON-
SPIRACY, COLUMBIA, SOUTH
CAROLINA, 1871.
THE NARRATIVE.**

Edward T. Avery was an organizer and one of the leaders of the Klan in his county and his trial on an indictment for conspiracy against the exercise of negro suffrage in general and interference with a negro named Samuel Sturgis in particular brought out a great deal of information concerning the methods of the Ku Klux organization in South Carolina. It was so evident that he would be convicted that when his counsel began his address to the jury on the last day of the trial it was noticed that he had not come into court that morning, and on being searched for, it was found that he had fled. The case went on, however, notwithstanding his absence, and the jury returned a verdict of guilty as charged.

THE TRIAL.

In the United States Circuit Court, Columbia, South Carolina, December, 1871.

HON. HUGH L. BOND, }
HON. GEORGE S. BRYAN, } *Judges.*

December 29.

Edward T. Avery,* was indicted with several others upon four counts; one charging the general conspiracy, and the others charging an interference with one Samuel Sturgis, a colored man, in the exercise of the suffrage.

* Mr. W. A. Clark, now president of the Carolina National Bank, of Columbia, S. C., at the time of these trials had just been admitted to the bar, and had begun practice with his father-in-law, C. D. Melton (*ante*, p. 737). Mr. Clark, in a letter to the editor, says: "I was present at most of these trials. The citizens of the State raised a common fund of \$10,000 and retained the Hon. Reverdy Johnson, of

D. T. Corbin, U. S. District Attorney, and *D. H. Chamberlain* for the United States; *F. W. McMaster* and *W. B. Wilson*,^b for the Prisoner.

A jury was impanelled, and the prisoner, upon arraignment, pleaded *not guilty*.

The following persons composed the jury: Peter B. Glass, (white) foreman; E. Johnson (colored), Wm. Smith (col-

Baltimore, and Mr. Stanbery, of Cincinnati, each of whom had been Attorney General of the United States, and distinguished members of the bar as general counsel. Each of the accused, however, had their local counsel, and Mr. Melton represented several of these from York County, the county of his birth. In these cases Judge Bond proved himself a partisan, and the juries were all packed, made up of more than one-half negroes and the other white Republicans, so that the opportunity of acquittal was remote. In fact, all who were tried were convicted. Dr. Avery, a distinguished physician, and prominent citizen of York County, was among those tried as a member of the Ku Klux organization. At the close of the argument, and when the case was submitted to the jury, late one evening, he asked his counsel what were the chances of acquittal. His counsel replied, none. He then bade him good bye and the next day when court convened he did not appear, and a verdict of guilty was then rendered. When he left the court the day before he went by night to his home and made his arrangements to leave the country. He went to Canada. Another York County physician who fled to Canada to escape trial (Dr. J. Rufus Bratton) had a curious experience. He resided in London, Ontario, and the Federal authorities arranged to kidnap him and fetch him back to the States. To this end one afternoon they followed him in a closed carriage and when overtaken he was violently seized, hand-cuffed and rapidly brought across the line into the States, and then by the detectives brought back to Columbia. This matter was brought to the attention of the British Minister at Washington, who addressed a dignified but very positive letter to President Grant's Secretary of State, Mr. Hamilton Fish, calling the matter to his attention and demanding that Dr. Bratton be returned to Canadian soil. This letter was interpreted in the true sense, and at once Dr. Bratton was returned to Canada. There he remained until 1876, when the State was restored to the Democrats, and he returned. My recollection is that then President Hayes extended a pardon to all those who had been convicted. My impression is also that President Grant had pardoned several of them before his term of office expired."

^b WILSON, WILLIAM BLACKBURN. (1827-1894.) Born Columbia, S. C. Graduated South Carolina College, 1846. Admitted to bar, 1848. Member State Legislature, 1853, 1860, 1862. Entered Confederate Army as private and at close of war was Brigadier-General. Died Yorkville, S. C. See *Yorkville Yeoman*, March 9, 1894.

ored), Gabriel Cooper (colored), Wm. F. Dover (colored), Josiah Mannerling (colored), W. H. Jackson (white), Philip H. Salters (colored), Andrew W. Curtis (colored), William Reed (white), John W. Gordon (colored), Edward Reed (colored).

Mr. Corbin. Gentlemen: We intend to prove in this case the charges alleged in the indictment. We shall first show that Dr. Avery, the defendant, was a member of the Ku Klux order in 1868. We shall show you the nature and character of the Klan at that time; we shall then show you what the Klan has become since, and what it was last winter. We shall show you that Dr. Avery was seen on several occasions with the Klan, when visiting colored people, and whipping and outraging them in various ways. We shall further show you that this Klan not only whipped and outraged colored men, who were voters, in various ways, but that they went so far as to kill them. This will be the scope of the testimony.

THE WITNESSES FOR THE PROSECUTION.

Osmond Gunthorpe. Reside in York County, near Dr. Avery's; was initiated in the Ku Klux Klan by Dr. Avery, and sworn in by him; remember a portion of the oath I took; it was to oppose and reject the principles of the Radical party; we were to protect widows and orphans and female friends, and the penalty for divulging any of the secrets of the order was death. (Mr. Corbin here read the oath from the constitution and by-laws of the organization (see *ante*, p. 615); that was the oath I took; the organization was represented to me to be for self-protection, but when I was in it, found it to be a political organization in the interest of the Democratic party; afterwards left it; Dr. Avery was chief at that time;

was sworn into the Klan in the woods at night, and there were some fifteen men present; was blindfolded and got upon my knees, and when the bandage was removed from my eyes there were a number of men pointing at me with their pistols. Each member of the order was required to have a pistol and a Ku Klux gown; the object of the gown was to disguise the person; it covered the whole body down to the feet; they had a kind of cap for the head that hung down over the face, making a false face; the night I was initiated some of them had their disguises on; Dr. Avery had his on.

Cross-examined. I joined the order for self-protection; there were rumors in the country, and fears that the negroes would

rise; heard there was a Union League at Rock Hill; heard that there were threats from the negroes.

Lawson B. Davis. Reside in York County; was initiated in the Ku Klux Klan; heard the constitution and by-laws. The contents of the oath were that female friends, widows and orphans, were to be objects of our protection, and that we were to support the constitution as it was bequeathed to us by our forefathers; and there was to be opposition to the 13th, 14th and 15th amendments; the 14th was particularly specified in the oath. (The constitution and by-laws were here handed to witness by Mr. Corbin (see *ante*, 615).

A proposition was brought forward to make a raid upon some persons. I inquired the reason, and they said they were prominently connected with the Union League; those who belonged to the League were to be visited and warned; that they must discontinue their connection with the League; if they did not on the second visit, they were to leave the country; and if they didn't leave they were to be whipped; and if after this they did not leave, they were to be killed; have known of instances of raiding for guns; one raid upon Jerry Adams; Charley Byers told me they had whipped him; he used to be chief of the Klan; Jerry Adams was a Radical; Charley Good was a blacksmith, and a very good workman, the best in that part; he was whipped so badly that he could not follow his trade for several days; two or three weeks after that he was killed. Wes-

ley Smith gave as the reason for killing him that Charley Good knew some of the party who had whipped him.

Charley Good was a member of a militia company, and, being told it was not to his interest, he left it and returned his gun.

Kirkland L. Gunn. Reside in York County, and have been a member of the Ku Klux, John Mitchell's Klan. Wesley Smith swore me in. Its object was to kill and whip the Radicals until the party should be beaten. Was present at two meetings, but never went on a raid; the first Mitchell Klan made a raid upon Bill Kell because he was President of the Union League; they were going to kill him, but his brother, Hugh, came into the crowd and they thought he was sent as a detective, and they stopped the raid. Only knew of three persons who did not belong to the Ku Klux; those were my two brothers and a man named Hugh Burra.

Thomas L. Berry. Am a resident of York; was a member of the Ku Klux; the purpose of the organization was to break down the Radical party by whipping and killing. Wesley Smith told me that he and three other men killed Charley Good. I suppose they done it because he belonged to the Radical party; knew Charley Good well; he was a very good man; Smith said he shot him and then turned the butt of his gun and sunk the cock in his head; broke the stock of the gun off; the body was thrown in the river; about the same time that Charlie Good was killed, down in Chester district, there were two negroes killed, Sam Skafe and Eli McCollum.

John Caldwell. Joined the Ku Klux Klan in 1871 at Yorkville; have been on raids of the Klan.

John Thomasson. Live in York County, but I was chased from there by the Ku Klux. The first time there was six came; they told me they wasn't going to hurt me, but they cussed me and asked me who did I vote for, and I told them that I voted for Mr. Wallace, and they asked me why did I vote for them; I told them I thought they were right; and they told me that he was a damned rascal; I told them I didn't know that. Then he made me raise my right hand and swear that I would never do so again, or they would send me to hell. Then they told me to go in the house and they wouldn't hurt me.

There was four came the second time, and when the third came, there was only three came in the house. They caught me and jerked me by the collar, and knocked me down and wrenched my shoulder; and it hurts me to this day to raise my arm above my head. I then left the country.

Abram Brumfield. Live on Major Berry's land in York County. Was sixty-four in May; the Ku Klux raided my house some time after midnight. When I heard them coming, I went out; and I got the door about half open, and saw them coming, running, with their guns in their hands, disguised. I just laid right down against the fence, and again I could get my eye to the crack of the fence, the door was surrounded. They all goes in but two, and these stayed with their guns drawn,

just ready, if I sprung out to fire on me. They searched below; when they closed the door, I crawled off from the house under a pine bush, and there I laid. Heard the conversation; never knowed but one man by his voice, Dr. Avery, this man (pointing to the prisoner); have known him from a little bit of a boy; they whipped Postle before they came to my house; saw Postle on Monday morning.

Emeline Brumfield. Am wife of Abram Brumfield; the Ku Klux came to my house some time in March; Mr. Brumfield had been lying out for four weeks. He heard that the Ku Klux was coming to visit our place, and I told him he had better lay out, for fear they would come on him and whip him or kill him. They just come on, and had a black man by the name of Hampton Avery; they called Brumfield, and I says "Brumfield ain't here;" and the man says, "You are a God damned liar, he is here." I says "there is nobody up there but Sam Sturgis." They says, "You tell that old man, Abram Brumfield, to leave off from that damned League;" told them I would. "You tell that old man, Abram Brumfield, that I came here tonight to send him to hell." I says: "I am very sorry to hear that." "Well, that was my business here tonight; for I came just from hell myself, and I come to send him there." I answered him, "when a soul dies and goes to hell, it never comes back here again." He says, "How do you know? has you been there?" Recognized the Captain, there he sits before me, this man, Dr. Avery. His disguised face didn't cover

his monstache good, and I seen that. I noticed very much he didn't use his left hand; that he used his right hand when he hung up old Sam Sturgis he held up the rope with his hands and I seen them there again.

Sam Sturgis. Am sixty-one, past; was at Abram Brumfield's house when the Ku Klux came there. They routed me up out of bed. They told me to come down; don't wait to put on your clothes, damn your soul, come down. I got up and come down. They fastened me by the ears and bully ragged me over the house, and jerked me down to my knees and kicked me, and put a pistol or two to my head. They threw this wrist out of place; recognize the man sitting over there (pointing to the prisoner); knew him by his face; and I caught his voice before I came down out of the loft; I recognized his hand. His false face was off to one side, and I noticed all his whiskers then. Then they jerked me up with that string on my neck; they had a running noose and throwed it over my neck and drawed it up; noticed the hand then.

December 30.

Harriet Postle. Live on Mr. James Smith's plantation; the Ku Klux visited me last spring; they made a great noise and waked me up, and called out for Postle; my husband heard them and got out; told them he was gone for some meal; they called me a damn liar; one of them said, "I am going to have the truth tonight; you are a damned, lying bitch, and you are telling a lie;" he had a line and commenced putting it over my neck;

I recognized the first man that came into the house, it was Dr. Avery; recognized him when he was entangling the line round my neck; caught his lame hand; it was his left hand that I caught—his crippled hand—I felt it in my hand; and I said to myself right then, "I knows you;" and I knew Joe Castle and Jas. Matthews, the old man's son; I didn't know any one else; there was about a dozen altogether there; Dr. Avery had on a red gown with a blue face, with red about his mouth, and he had two horns on his cap about a foot long; they afterward found my husband under the house.

Isaac A. Postle. Have been a preacher for about five years; have lived in York County ever since the days of emancipation; the Ku Klux came to my house last spring between three and four o'clock, called for Postle to come out; thinking I might be killed, I got under the floor; my wife she put the plank back; she went and opened the door; they began with her to find out where I was; my wife told them he had gone away; heard my wife screaming and hallooing; after they got through with her, and knocking her over, and putting the rope around her neck, I could see them looking round and under the house. One of them, the Captain, saw me and pointed his pistol at me, and said, "come out, if you don't I'll kill you;" I came out; he grasped me by the hair, and one of the men struck me with a club; he then put a line round my neck, gathered it up in his hand, and took me out of the house till we struck the woods; then the crowd got round me and

asked me if I hadn't been preaching up burning and corruption, and telling the people to set fire to the gin houses and barns; said I: "No, sir; I never did;" I have never preached nothing but peace and harmony;" said I: "We have had no disturbances in this part of the country; no burnings nor anything like that in this part of the country;" said they: "Do you know who set any of these barns on fire?" said I, "I do not; I have been traveling up and down the river preaching in my circuit, and don't know anything about it;" they called me a d—d liar, and said I could tell them if I liked; they began to question me about guns, and I told them that I knew nothing about them; then they said: "Jerk him with the line;" one of them went up a tree; "and," said they, "we will have the truth directly;" he drew me up till I had to stand on tip-toe, so that I was choked and could not tell them anything; the captain told each of the men to hit me two licks apiece; they gave me two licks apiece, as hard as they could; my flesh was cut so much that it bled; I had nothing on but my shirt and my slips. The captain said: "Didn't you say that you would raise your children as good and as nice as anybody's children?" Said I: "No, sir; I cannot raise my children so well, because I am not able." Said he, "if there is any more burning of gin houses in the country, we intend to kill ten niggers for every one burned, and you'll be the first one." They asked me

again if I did not preach corruption and burning; and I told them I didn't, I preached only peace and harmony, and I didn't advise or instruct anything that was wrong. But when they took the rope off my neck, and the man they called captain talked with me, and said that they were men of peace, of justice, and of right, and then it was that I believed that Mr. Avery was one of the men, and that Howard White was another, and James Matthews another. Howard White is a colored man, and a Democrat; didn't recognize anybody else in the crowd. The men were dressed in different colors. When I was under the house, I looked at the captain, and his dress appeared to be blue and yellow. He had horns on his head over a foot long, and something over his face that appeared to be of different colors. He had a long gown that came pretty much down towards his feet. Some of them had old handkerchiefs over their faces, with holes in them for their eyes.

Crossed-examined. Knew it was Dr. Avery, from the commonness of his talk; mean by that that I was commonly with him, and knew his language very well, because I passed and re-passed him so often, and I naturally believed he was the man; did not make a statement afterwards that Dr. Avery was not the man. (A paper was here handed witness.) Signed that paper and made that affidavit; Rev. Mr. Cooper drew the paper.

The affidavit was as follows:

"Personally appeared before me, R. C. Crook, Trial Justice in and for the County aforesaid, Isaac A. Postle, alias Preacher Postle,

who, being duly sworn, depose and sayeth, that the following charges against Dr. Avery, on the night in March, 1871, to oppress, threaten, injure and intimidate the said Isaac Postle, the preacher, are, according to the evidence now appearing, incorrect and false.

(Signed)

A. Postle."

After the charges against Dr. Avery were published in the papers my wife told me that Mr. Cooper had been to our house, and wanted to see me very much. He told my wife he wanted to see me very much the next morning. Mr. Cooper came, and we had some talk. Says he: "Postle, I want to see you as a friend;" and says I, "a friend is hard to find; I have been living in trouble and alarm all the year." Says he: "I want to talk with you about a matter that is in your behalf as well as in mine." Says he, "Charges are coming out against Mr. Avery, and he is put in prison for whipping Postle and Sturgis. From that, we believe that you have put him in prison." Said I, "I have not put him in prison." "Well," said he, "here are the charges anyhow." Then said he, "If we can show you sufficient lawful evidence, will you withdraw the charges?" I told him, Mr. Cooper, I did not believe he could do it with lawful evidence. "Well," said he, "if we can, will you do it?" Said I, "I don't believe you can." Said he, "It is not your will or desire to punish a man that is innocent?" Says I, "It is not the mind of any Christian man, much less a preacher, to punish a man if he is innocent."

Then he wanted to know if Dr. Avery had ever threatened me or intimidated me at any time; "no," said I. Mr. Cooper would not leave me until I promised to go and see Mrs. Avery.

We went up, and she invited us in, and we sat by the fire, and she said to me, "has Mr. Avery ever threatened you, or hindered you, or forbidden you from bearing arms, or anything of that kind?" "No," said I, "he has never interfered with me in that way." She then told me that Dr. Avery had been put in prison for whipping Postle and Sam Sturgis; "and," said she, "if I give you lawful evidence, that will satisfy you that he did not whip you, will you withdraw the charges?" Says I, "Mrs. Avery, I did not put Mr. Avery in prison, and nothing that I can do can take him out. I never swore against him, and I don't intend to swear either way," said I; then she got up and read the charge to me; said I, "that was when they shot into my house and asked me about arms;" then she said that she had sufficient evidence to show that he had not troubled me; said I to Mrs. Avery, "these Ku Klux do their work in the night, and no one knows it; and I believe that your husband could leave your bed without you knew it." "I will swear," said she, "that Dr. Avery did not do it." I felt very small, being with a lady like her—of her ability and position—and I felt it was almost wrong not to submit to her; then Kizzy and Lou Chambers said, "we will swear that Dr. Avery did not whip you; he didn't leave his house or bed;" said I, "when it was done it was midnight and dark work, and no-

body knows anything about it up to this time;" then they talked to me for a considerable time.

At last Mrs. Avery said, "our talk is all in vain; and," said she, "If it was me, I would not ask the favor of any man. I would present my case and call for my evidence, and they would come up and prove me guiltless; and," said she, "I would sue you for 'salt and perjury,'" if I don't mistake the language, for I am not very common with words according to the law; "and," said she, "I would bring you to the same condition, and, as such, to be cropped and branded and penitentiared for ten years, and perhaps for your lifetime." Then I flinched, for I had never been in law. I did not know what to say or do. Said I, "Mrs. Avery, I have been in fear and dread all the year, and now, it is the same thing over again."

Mr. Cooper then spoke up and said they would take the effort of the law on me, and sue me for "salt and perjury," and throw me into the same condition; and as such, I would be cropped, branded and penitentiared. After this, I began to feel miserable. Mr. Cooper and Mrs. Avery, and Kizzie, and Lou Chambers, all said they would draw on their oaths; and they said their oaths would be taken in court;" then says I, "I will withdraw on your oath, but not on my oath." That is how it was. Then we went to the Magistrate, and Mr. Crook did the writing, but it wasn't right; and then Mr. Cooper wrote it, and as I understood it, it was resting on their oath, not on my oath; that I would withdraw it

on their oath; and then I signed it; that is the way the whole matter went.

I still think that Dr. Avery was the man who was Captain that night.

Thomas Morehead. Live in York County; was there during the election of 1868; the polls were very much crowded; the colored people were obstructed; a great many were crowded away. Dr. Avery, he was standing right with his hand on the window, and tested every vote that was given. Voting was a new thing to the colored people, and they were nearly afraid anyhow; this crowd prevented a great many from voting at that election.

Remember a notice that was put up; it said: "K. K. K." No name signed to it; and, following on the face of it, was, "Oh, ye blind and foolish parties, stop! stop! and study before you further go!" and, at the bottom of it, they had a grave and coffin, and straps down in the coffin, and the lid laid off to one side. It says, "We won't stop; we have guns and bayonets; we have bowie-knives and pistols; we have held out our hand to you, and you won't accept it; we have offered, and you won't accept; and if you won't now, stop before you further go, and listen and sympathize with us." Then it says, "Your voices shall be shut up in a lonesome valley, where they will never be heard no more." I don't remember it all. The colored people were very much scared; you can't find a dozen men in that precinct there that stayed in the house at night. I laid out for about four weeks; the colored

people were being whipped at night by the Ku Klux.

Governor Fewell. Live in York County, on Captain Ferris' plantation; am a Republican; the Ku Klux visited me before the 1868 election; they shot at my house, and knocked down

my door, and aimed to come in, and I knocked them down as they came. I couldn't recognize any one that I knocked down, but I knowed a man at my house. I knowed Dr. Avery, James Alston.

TESTIMONY FOR THE DEFENSE.

R. E. Cooper. Am a Presbyterian minister; know this man Postle; on Monday after the Friday he said the whipping occurred; he stated the fact that, on Friday night previous he had been visited by a number of disguised gentlemen, and that they had sorely afflicted him, just as he stated today on the stand, and asked me, as a supposed friend for counsel and advice. I asked him if he knew any person who was present? He told me he didn't know a single person. Was present at the interview between himself and Mrs. Avery. The statements of the old man are substantially true, but incorrect in particulars. Mrs. Avery asked me to go and see Postle; being a friend, and being a pastor, and believing, as I did, that Dr. Avery was innocent of these specific charges, felt at liberty to go and see Postle, because he told me, himself, he had never sworn against him. I said to him, "Now, Postle, you have told me that you had not sworn against Dr. Avery. Why not come and hear what Mrs. Avery has to say; listen to what evidence she can produce in exculpation of Dr. Avery from this specific crime." I told him he was assuming a very grave responsibility, as he had stated to me that he could not swear to Dr. Avery, and we had wit-

nesses to prove Dr. Avery was not there; because, if he failed to establish his point, that Dr. Avery, or his friends, could have redress in a legal manner.

Next day he met me in the road. He says, "Mr. Cooper, I have come to see you this morning, and to say that I have never put Dr. Avery in prison, and I can't take him out." My reply was, "there is Mrs. Avery, in the door, go and see her." He says, "I won't put my foot in the yard, unless you come;" I said, "come on." Mrs. Avery invited us in her sitting room, and said: "As the wife of Dr. Avery, my testimony will be worth little or nothing in court; but my testimony to you is valid, if you will believe me what I say. I am willing to testify, upon my oath, if my hopes of salvation depended upon the statement which I am now about to make to you I would still say that Dr. Avery, my husband, was in my chamber the entire night." Then Postle replied to that statement by again bringing up the great difficulty in proving the point. He even went so far as to say that the husband of any wife might, during the night, retire from her chamber without her knowledge. Mrs. Avery pressed the point gently, saying to him, "Are you willing to take my word?" He didn't say

whether he would or not. Then she summoned old aunt Kizzy and Lou, and asked them, and old aunt Kizzy remarked, "Mr. Postle, Mass Ed was home that night, and I am willing to swear it on a stack of Bibles as high as the sky." Lou said that Dr. Avery was in his chamber that entire night. So far from saying anything about twenty years' imprisonment in the penitentiary, having his ears cut off, and himself branded, not one single word was said about that. We remarked that he assumed a very grave position, inasmuch as he had said he couldn't swear against Dr. Avery, and we had witnesses to prove that Dr. Avery was at home that night. Mrs. Avery made this remark: "Now, Postle, I neither threaten, I neither beg, nor do I buy; but I ask you in the name of justice, if you are satisfied with this evidence to give us your affidavit;" and the old negro said he would do it. I ordered my horse and took him with me. I met Mr. Crook and asked Mr. Crook if it was competent for him to write out an affidavit. He said it was. He attempted to write the affidavit, and I saw that the syntax and prosody, both, were very incorrect, and I didn't want such an affidavit to go before the authorities of these United States; and he told me he had a difficulty in writing it. He says: "Take this paper, Mr. Cooper, and write the affidavit." I did so. On coming back from the Magistrate's, Postle told me that he had gone to Colonel Merrill and told Colonel Merrill he supposed Dr. Avery was connected with the affair, and Colonel Merrill asked him to swear

to it. He told him he wouldn't do it; but he told me, then, he was satisfied that Dr. Avery had no connection with the matter—he was satisfied upon the statement of these two women.

I read the affidavit, carefully, and explained every word.

Louisa Chambers. Am a nurse at Dr. Avery's, and help to keep house. The night of this raid upon Sam Sturgis and Postle was in Dr. Avery's house. Usually sleep right opposite his door, a piece from his house, but that night I was in the house, because his youngest child, the baby, what I nurse, was sick. Dr. Avery that night was right there in the house. He went to bed betwixt 9 and 10 o'clock, and remained there the whole night. I was up and down at all times of night with the child, and was obliged to go to his bedside to get the child, and he was in his bed all night long. It is not the Doctor's habit to be away from home at night; was present at an interview between Postle and Mrs. Avery. Mrs. Avery just simply asked him for satisfaction about this thing. She told him she neither begged, nor persuaded him, nor hired him. He said Mr. Avery did not whip him; there was not a threat made that day, for I was there present, and I heard nary threat.

Cross-examined. Am twenty-one. The child that night was teething. Dr. Avery did not get up that night at all, for his wife and I got up and waited on the child. Haven't been talking with Dr. Avery since court adjourned last evening.

Kizzy Avery. Live with Dr. Avery; am cook; saw Dr.

Avery the night spoken of; seed him before he went to bed, and seed him when he got up in the morning; generally rise between 4 and 5 o'clock; saw him from my window during the night, between 10 and 11 o'clock; he was in bed. Did not hear Mrs. Avery make any threats, or Mr. Cooper. Postle said this—he said that he didn't prosecute Dr. Avery and couldn't say it was Dr. Avery at all, that whipped him.

Dr. Tally. Was a surgeon in the Confederate army; am well acquainted with gun-shot wounds; know Dr. Avery; have examined his arm and hand; examined it this morning, by request, and traces of the wound are still apparent in the armpit. The brachial plexus nerves there were torn through entirely, the nerves which preside over the motions of the fore-arm especially; the extensor muscles of the fore-arm are paralyzed partly, so as to deprive him of the power of moving the fingers; these fingers are contracted, and muscular power over them is lost; the thumb is paralyzed almost entirely; there is scarcely any power of the hand left now; indeed, the hand is entirely useless; the capacity of raising the arm up is very much impaired; he has more power over the arm than over the fore-arm, however; he can raise the arm to a horizontal position; he cannot extend it any height; he can raise the arm, but the power over the fore-arm and hand is especially lost.

(The prisoner showed his hand to each juror.)

R. P. Mayrant. I was a deputy constable of the State; was

at Rock Hill at the election in 1868; as to the crowding of the colored people from the polls that day there was none whatever; I had appointed several special constables on that occasion, and requested them to see there was no crowding the polls by white or black; did not see any colored people prevented from voting there that day; did not see Dr. Avery interfering any that day.

Franklin H. Brown. Know Mr. Gunthorpe; heard him testify in this case; know something about that order of 1868, that he spoke of joining. In the fall of 1868 a neighbor told me that there appeared to be organizations among the colored people, and the neighborhood had it in contemplation to form an organization for the purpose of self-protection and they were going to meet at a certain time, and solicited that I should go. "There is going to be a meeting a certain evening, and will you come over?" After early supper, I concluded that I would go; when I went there, there was some ten or eleven persons together; told them I didn't know what the nature of it was, nor anything about the object of it, and didn't like to ask many questions, and didn't like to go into the thing, unless I knew what it was. They said the colored people were known to be collecting in bodies, and they didn't know what it meant; they all appeared to be anxious to get an old musket or gun; it was said they all had a gun of some description; and there had been some talk of certain purposes being carried out; but no one knew whether it was reliable or not; they said that

the condition of the country was this—that there wasn't a man in that country that had arms at all. I felt in the same condition; I hadn't a shooting instrument on the plantation. We was to be harmless, and not interfere with any man's political or religious principles; just simply to act on the defensive. Well, I said I saw no harm in that thing at all; and they asked me then, "Will you go into it?" I told them I didn't see any reason why I shouldn't; if any of my neighbors got into trouble I would go to his relief, as a matter of course—or women and children. I took an oath; I think it was Dr. Avery that gave it. It was proposed that they meet some time again and make some regulation, and know who had arms, or something of that sort; went to a meeting after that, and then I never knew anything more about it. It embraced the staid, respectable people of that county; it was not proposed to use any violence or violate the law; nothing was said about interfering with the colored people to keep them from voting.

Cross-examined. Do not recollect seeing Mr. Gunthorpe in that organization; remember in the oath we were not to divulge anything under penalty of death! It was called an organization for home protection; never heard anybody call it Ku Klux; heard of something of the kind in Tennessee; did not see any disguise that night; saw one man in disguise the next time I went there.

Frank Caruthers. Reside in York County; heard Mr. Gunthorpe's evidence in this case; joined an organization there, for

home protection, as I understood it; don't know if Dr. Avery was a member of it; the understanding as to the object of this organization was that it was just for home protection. If any raids were to be made by the blacks upon us, we were to be ready for it. No, sir; it was not contemplated to interfere with any rights of the colored people. It was strictly for self-protection. Do not remember what the oath was; I thought so little about it I don't know what the oath was; was present when the Rev. Mr. Alston was admitted; he wanted to know if it was a political organization; and it was explained to him, by Mr. Jones, that it was not. He said if it was he would have nothing to do with it; it was for self-protection; provided that if the blacks should make a raid on us, the object was we could come together. We had seen that the blacks—we supposed that they were organizing. Some of them had got guns, and we suspected that there might be danger, and we wanted to be prepared for it.

John A. McCullough. Heard Mr. Gunthorpe's testimony in reference to the order of 1868; was at Rock Hill the latter part of that year, and there was a good deal of excitement in the country, and I was asked if I would go into an organization for self-defense, and I told them I would; thought it looked like we needed to be prepared for something. There was a good many rumors in the country, and the black people were mustering about, and had made some threats in Rock Hill and Ebenezer. Something about their going to make Ebenezer run

with blood. They were going to burn Rock Hill. I think that was the report. There was only one thing made an impression on my mind. When we entered into the organization there was a Methodist minister in there at the time, and he asked the question, whether this was a military organization or not. Says he: "I am opposed to that." Not a military, a political. Says he: "I am opposed to that." I took

an oath; but I don't mind a word of it now.

Cross-examined. There was a minister initiated the same time as me; Mr. Alston, now in Arkansas; don't know that he was a Ku Klux; there was nothing said about Ku Klux that day. That was just an organization for self-defense; don't pretend to say it was Ku Klux, nor was not.

IN REBUTTAL.

January 1, 1872.

O. H. Bankhard. Am a juror in this court. On Saturday evening saw witness, Louise Chambers, in close conversation with Dr. Avery, just before the opening of the court for the evening

Governor Fewell. Was present at the election at Rock Hill, in the fall of 1868; Mr. John Batersee, Dr. Avery and Ira Jones were there, crowding colored people from voting.

Cross-examined. Think the colored people had the majority of votes, but those gentlemen tried to over-persuade the colored people, and to push them away; they shoved them back to keep them from voting, and tried to make them vote on the Democratic side; they pushed some of them back, because, they said, they were not old enough to vote; don't know who the election was for; I don't know that they were voting for members of Congress; but I just voted. I voted for Grant.

Major Lewis Merrill. Am a United States officer, on duty at Yorkville; Rev. Mr. Cooper had been arrested for intimidation; he was brought by the United

States Marshal to my house. He began a series of explanations of his relations to the indictments; I repeated to him what had been told me by Postle, as to the character of the intimidation used by him and Mrs. Avery. I asked him distinctly if anything at all had been said by him, or by any other person, to Postle, in regard to perjury; he distinctly and repeatedly said that no allusion was made to it at all; told him I had learned that Postle had made an affidavit, which, I understood Postle to say was, in effect, a denial of any knowledge of the relations of Dr. Avery to this particular outrage; he repeated, substantially, the story he told here on the witness stand; that story I repeated to Mr. Cooper, and said I had nothing to say about its truthfulness; that I did not charge, personally, that the matter related by Postle was true, but that it had become necessary for me, in the discharge of my duty, to issue a warrant for his arrest, for intimidation, and then followed the conversation. I stated to him, in explicit terms, that Postle had told me that Mr.

Cooper and Mrs. Avery had told him that Dr. Avery would be acquitted, and that to use his own expression, they would then take "the effort of the law" upon him, which would result in his being put in the penitentiary for twenty years, and be branded and cropped; to that he replied, that no such conversation had occurred at all. I asked him as to whether anything had been said to the negro about his statement being false, or, as to the consequences of his testifying, and the reply of Mr. Cooper was, several times, and emphatically, that no such statement had been made.

Cross-examined. Have received information that the outrages upon Sturgis and Postle were committed by some other parties. But Mr. Rateree distinctly said that Dr. Avery was one of the persons who was there. I said to Mr. Rateree that a young man named Parks Wilson was there, and Mr.

Rateree denied that, and said he knew he was not there. Among those he named as being present were Ira Jones, Major Avery and Mill McElwee. I remember Mr. Rateree expressed an earnest solicitude to tell me all he knew about the Ku Klux organization, but, when he came to my house, he faltered and prevaricated to such an extent that it induced me, at last, to tell him that I had no desire to listen to him any further; that if he chose to tell me what he knew, I was willing to listen to it, but, if not, that I was not disposed to get it out of him by means of a corkscrew. He had not left two minutes before one of my officers informed me that Mr. Rateree desired to return and make a full confession. Mr. Rateree then came back and made a very clear and connected statement, till he came to the point where he was to tell of this Ferris business, in which he himself was wounded.

MR. MC MASTER FOR THE DEFENSE.

Mr. McMaster. Gentlemen of the Jury: It has been said by a great man that, from very early times in Great Britain, a man was entitled to be tried, not by judges, but by his fellow-subjects. That great privilege of the jury, which is called the palladium of liberty, is descended to all countries which have received their laws from England. England herself, however, in the management of her colonies, has departed from that mode of trial; that is, they have followed the forms, but they have, in some cases, destroyed the spirit and the intention of the jury law, which was to allow citizens to have a full and fair investigation of their cases; and in Ireland, until the last few years, the jury, instead of being the bulwark of defense of the rights of

citizens, has been made the instrument of conviction. You may remember the case of Mr. O'Connell, one of the greatest patriots, and one of the greatest men that Ireland ever produced. The authorities in Dublin convicted him, as they had convicted hundreds before. Mr. O'Connell was a Catholic. The question was between the Catholic and the Episcopal Church of England. In Dublin the juries were so arranged that every man who sat upon them was an Episcopalian. Mr. O'Connell was convicted.

It was the custom of the English Court, whenever there was a conflict between races or individuals, when justice could not otherwise be done, to select six men on one side and six on the other—as Mr. Macaulay illustrated in one of his speeches.

Mr. Corbin. I don't notice the prisoner in court; I have just asked the counsel where the defendant was, and the reply I received was, that was for me to find out.

Mr. McMaster. I repeat it now.

The Court. Where is your client?

Mr. Wilson. I understood, may it please the Court, when we adjourned on Saturday night, that Dr. Avery had gone to see his family, and that he would return today.

The Court. Do you expect him back?

Mr. Wilson. I had no interview with him; I expected him to return by the next train. I know nothing save from the information I have received from Mr. McMaster.

The Court. Do you know where your client is, Mr. McMaster?

Mr. McMaster. I beg the Court will excuse me from answering that question.

The Court. Had you any knowledge from your client that he was going away?

Mr. McMaster. I hope the Court will excuse me from answering.

The Court. The Clerk will lay a rule on Mr. McMaster to answer the question or show cause why he should not be thrown over the bar.

The Court. Mr. Corbin, do you propose to have the bail forfeited?

Mr. Corbin. I do sir.

Mr. McMaster. Will the Court allow me to offer a suggestion?

The Court. We would rather have you answer the rule.

Mr. McMaster. I hope the Court will appoint a time in which I can answer. Your Honor will not, certainly, demand an immediate reply to a grave question of that sort. I am to show cause why my name should not be stricken from the roll; you certainly

will give me time, at least until tomorrow, to consult with counsel, on a motion of such importance as that.

The Court. Mr. Clerk, call the prisoner.

The Clerk called, in open court, three times, the name of Edward T. Avery, to which no response was made.

The Court. Forfeit the parties' bail, Mr. Clerk.

Mr. Corbin. There is some little uncertainty in the mind of the Attorney General and myself, as to the proper course to be pursued. We have exhausted so much time, trouble and expense, in the prosecution of this cause, that if it is permissible to go to the jury with it, we should like to do so. Whether, if we proceed to a conviction, the proceedings would not be invalid, is somewhat uncertain. Before putting the case before the jury, for their conviction or acquittal, we would ask the Court to adjourn, to give us time for consultation.

January 2.

Mr. Chamberlain. Since the adjournment of the court yesterday, the District Attorney and myself have examined the question, as fully as time had permitted, as to the proper course to be pursued upon the flight of the prisoner, in the case now before the jury. There was no doubt that in cases of felony the prisoner must be present to plead to the indictment, to confront his witnesses, and to be present at the rendition of the verdict. In cases of misdemeanor, the prisoner may, under certain restrictions, be allowed to plead by attorney, and be absent even from the judgment and the passing of sentence.

The present question was whether the prisoner, after he had pleaded and had conducted his case thus far—after confronting his witnesses and examining them in his own behalf—whether the prisoner, in his own wrong, and of his own motion, and with the obvious purpose of escaping from the trial and jurisdiction of the court, could absent himself and flee from the officers of the court.

The authorities furnished one example precisely similar to the present case. Instances were on record where a request had been made by a prisoner that he might not be compelled to be present in court to listen to the verdict, and this in gratification of his own feelings; but, in such cases, the Courts, in England and in this country, insisted that he should be present.

In such cases, the prisoner was within reach of the Court, and could, on its order, be brought to stand before the jury when rendering their verdict.

The case which appeared exactly parallel to the present one occurred in the State of Ohio, when the prisoner was being tried on a charge of counterfeiting. In the progress of the trial the prisoner ran away, and the precise question involved in the present case arose—can the trial proceed to a verdict?

"Bishop's Criminal Procedure," on the "presence of the prisoner in court," section 687, shows that, in the case of felony or treason, the prisoner must be present in court; but that where the prisoner, in his own wrong, voluntarily runs away and escapes beyond the

IX. AMERICAN STATE TRIALS.

reach of the officers of the court, the Court may proceed to a verdict.

State v. McKee, 1 Bailey, presenting a case different in its circumstances from the present, but tending conclusively to show that the jury should not be discharged without rendering their verdict. In the case referred to, the defense had concluded their argument, and it came to the knowledge of the Solicitor that the foreman of the jury charged with the case had said that he would not convict any white man for the killing of a negro. The Solicitor claimed the right of entering a *not pro.*, on account of the statement made by the foreman of the jury. The question arose whether, under these circumstances, the jury could be discharged, or whether it must proceed to a verdict. That brought up the whole question of the circumstances under which a jury could be discharged. The case was argued by the Circuit Judge, and taken by appeal to the Appeal Court, where the decision was rendered by Judge O'Neill. The decision of the English Courts, of the Federal Courts, and of the State Courts, were given, and the conclusion reached that only on the following grounds could a jury be discharged: First, the illness of the prisoner; second, by the illness of one of the jury or Court; thirdly, the unavoidable absence of one of the jurymen; and, fourthly, the impossibility of their agreeing on a verdict.

If that be the law they were shut up to the necessity of giving this case to the jury; there was no ground upon which this Court could discharge the jury at the present stage. The practice of the English and American Courts insisted upon the corporeal presence of the prisoner, and if, after being present, and pleading and listening to the evidence for and against him, he made his flight, there was sufficient authority for the jury to proceed to the verdict.

As to the other question, whether this prisoner could claim a formal acquittal in case of the discharge of the jury at the present time, there was no doubt that he could not make that plea, even were the jury now discharged. The decisions of the Supreme Court upon that point were clear that it is a decision of the jury, by acquittal or conviction, that constitutes once in jeopardy.

Mr. Wilson. In this case I deem it proper, and feel it my duty, to leave the question entirely with the Court.

JUDGE BOND. We think it proper to proceed with the trial, and when the verdict is given any question may be argued, on motion, before judgment.

Mr. McMaster. Gentlemen: Yesterday I described to you the intention, spirit and powers of the jury, and attempted to show that in Ireland, in all the State cases, that the jury, instead of being the palladium of liberty, was an engine of oppression. In our country, that professes to have more freedom even than Great Britain, it is unfortunate that there has not been a provision made by Congress to provide

against similar outrages to those which have been perpetrated in Ireland.

What do we see here today? The law requires that in making up a jury for the Circuit Court, that there shall be one hundred persons selected by three assessors from different parts of the State, good, responsible, intelligent and reliable men, who are fit to be jurors, and from them a certain number shall be drawn to serve as the jury of this Court. It is well known that the proportion of persons entitled to vote, and consequently able in this State to sit on the jury, is in the proportion of two white to three colored persons. Does this jury exhibit that proportion? There is another fact that must strike every impartial observer, and that is that this is a political question before us, in some of its aspects. We have been told by a distinguished authority that you can count the white Radicals in South Carolina on your fingers, but the smaller number of whites that are on this jury are nearly all of them of that class. Now, gentlemen, I want to be very plain and honest with you, for I consider that you occupy a very responsible position, a position that would require great effort for you to vindicate justice and do justice. This jury is infinitely worse than a jury of Episcopalians trying the great Irish orator and patriot, who was a Catholic. It is a great deal worse, for there are, undoubtedly, on this jury, eleven men who are strong partisans, who are opposed to my client, Mr. Avery, in political faith. But it does not rest there. I see here nine colored men selected by the prisoner, from the panel, as the best, when the very outrages with which my client stands charged were perpetrated on colored men. Can you be other than naturally indignant at these outrages? Will not your hostility be naturally greater than a white man would feel? Therefore it is that I say the world has never seen a greater outrage than in the jury that is now trying this question. If Mr. Macaulay said, with regard to those Irish trials, that in every case of indictment for State offences there was a

reasonable certainty of a verdict being against the prisoner, in this case the chances of such a verdict are increased a hundred fold.

But, gentlemen, it seems to me that if I were a colored man I would rejoice in the opportunity of sitting on such a jury. I would rejoice in the opportunity of exhibiting to the world that I was for justice and for freedom; that the black man, despised as he has been in the past, has now put himself in a position where he can vindicate his character and show that a black jury may be superior to an Irish jury. He has an opportunity of rising above his prejudices, and doing justice not only to a political enemy, but to a white man, who is charged with being connected with a conspiracy whose object was to drive the black man from the soil of South Carolina. Gentlemen, that is your proud position today. Therefore, it is I beg and entreat you to lift yourselves above prejudice, and do justice to a political enemy, so that in future times your conscience can never reproach you, and that the world may say of your action, it was well done.

Gentlemen, I know I stand here today under the shadow and displeasure of the Court; I stand here suspected, possibly, in Dr. Avery's absence. I do not care, at the present moment, to vindicate myself. This is not the fitting opportunity. I am aware that I stand here fighting against a prejudice in your minds in favor of the guilt of Dr. Avery, from the fact that he has run away. Gentlemen, I beg you to be careful how you allow that prejudice to rest in your minds. If you would judge the case fairly, I ask you to put yourselves in the position of my client; ask yourselves what you would have done under similar circumstances. That, I say, is the only way in which you can render a fair judgment.

Now, Mr. Avery has gone; I hope he is in a country that is freer than this by this time; he gave his bond to attend this court; he came down here bold, defiant, and confident, as he always is; ready to fight any antagonist in the day-

light, never in the dark; he came here with confidence, conscious of his own innocence, but he did not know the jury that was to try him; he saw that at least eleven men out of the twelve were strong partisans and politically hostile; but such was his confidence in his cause, that in the selection of the jury, when a jurymen was announced to be connected with the Republican paper of this place, instead of refusing that juror, he said, "I like that man's face, I believe he can do me justice." The case went on, and he was horrified and astonished at the tales, the surmises, the suppositions, and positive gabble the prosecution introduced, and by which they sought to give horror to the scenes, and to show how terrific they were; and when he saw the desire of the prosecution to connect him with the horrid and unnatural crimes committed by the off-scourings of creation, by the coal-field men of York County, men that were never of any use to any country, either in times of peace or in times of war, when the desire was manifested to inflict upon a gentleman of York District, of which he was a good representative, such a stain, and stamp him with infamy; and when he knew that three months would not roll by before the parties who committed this atrocious outrage will have honor enough to vindicate him from all complicity; when this fact came to his knowledge, from one of the men who participated; and when he saw the probability of ten years in a penitentiary, I ask, can any man, under such circumstances as these, blame him for going "where the woodbine twineth?" Put yourselves, gentlemen, in his place, and say what you would have done.

His Honor, gentlemen of the jury, in the discharge of his duty, put an old man in the penitentiary, for five years, because he did not exercise his power, and stop these outrages. Great goodness! is such a thing possible? How is it possible, in a country desolated by war, where the people are so impoverished as to be unable to leave their place, how can men be held responsible for the actions of an

entire community? Are these men to be punished for not going out of their way to stop wrong doings and outrages, when every sentiment of honor and justice is being outraged in South Carolina; where bribery, corruption and stealing exist, from the highest to the lowest officer of the State? Has not the debt of the State been increased, in three years, from five to at least twelve millions of dollars, according to the last showing? And yet not a school house built, not a court house built, not a railroad built; nothing done to elevate the race, but everything to impoverish and to put shackles upon our industry and commerce. The Court said to this old man, "You should have stopped these things," that did not even occur in his District! But this seems to have made no difference; you should have stopped it, though it happened twenty miles away. You should have known it, and you should have prevented it. Does not this show how difficult it is to judge of the State of South Carolina, by a knowledge of what may exist in Florida or Maryland? We have not yet simmered down into a condition of order, quiet and peace, from the recent war which devastated our State. War permits license and outrage that would not be tolerated in time of peace. It is, therefore, impossible to judge about the condition of South Carolina by what may be found in New York, Pennsylvania or Maryland.

Now, I would call your attention to the class of witnesses by which it was sought to convict my client. I do not accuse any of positive lying; but witnesses have been upon the stand who are incapable of telling the truth. They speak of events that happened many months ago; their memory is confused; facts are intermixed; imagination often supplies the place of fact, and their whole statement is confused and utterly unreliable.

Let us look at the alleged crime with which my client stands charged. He is charged with raiding on Sam Sturgis, and for whipping Postle, on the night of Friday, the 1st of March. He is charged with being a Ku Klux. He

EDWARD F. AVERY.

undoubtedly belonged to an organization in 1868, as did almost everybody in that section of country at that time. Now, I don't care what they called the organization then—Ku Klux or anything else—it was not illegal, no more so than the Union League, and there was no law against it. A man might have been a member of that organization, and yet have nothing to do with the outrages that have been perpetrated since the Enforcement Act of eighteen hundred and seventy; of these he is "Scott free." Mr. Gunthorpe says that Mr. Avery was initiated in 1868, admit it; Mr. Gunthorpe says there was no constitution, that he knew of, and there has been no constitution proved to the organization that existed in 1868. The purpose of that society, as he says, was "opposition to Radical misrule." It was not illegal, for the thirteenth, fourteenth and fifteenth amendments, and the Acts for their enforcement, were passed after that. The organization that then existed did not oppose these amendments, but only spoke of opposition to Radical misrule. We have, moreover, proved, by a number of witnesses, that this organization broke down by its own weight. It had subserved its purpose; and, besides, it has been proved that it was merely a society for home protection. It may have been foolish; there was no occasion for alarm; for the disposition of the colored man is not to hurt anybody.

I protest, in the name of humanity, against the action which has been exhibited by the prosecution in this case. I utter my solemn protest against it. I come to you, gentlemen, to vindicate justice; and you, gentlemen, [addressing the counsel] before many months have rolled over your heads, will say that I was right. You, gentlemen of the jury, I trust, will bear in mind that it is far better that many guilty men should escape than that one innocent man should suffer; save the innocent, punish the guilty; show that you can appreciate justice; show that you can rise above prejudice; show that you are worthy to be free, and worthy to be jurors in any case, whether trying white

or black. But I imagine that five years will not roll by before my friend, the Major, will repent of any such resolution; for I cannot but believe that he will arrive at the conviction that the present measures are inhuman and unjust. These measures cannot surely be carried out in a spirit of revenge; revenge is an unholy passion. Gentlemen, show that you are equal to the position; do justice; vindicate your character; show that the black man can rise above prejudice; show that they deserve to be the pillars that support the country; that they deserve to be on the jury to help support the palladium of liberty.

Gentlemen, there may be some of you who know that I sympathize with Mr. Avery. Let me say that I hate a low, vile man, that does his deeds of darkness in the night, as I rejoice in a brave, open contest, and a fair surrender; and I believe in then shaking hands afterwards, as brave men always do. I know, gentlemen, that we cannot judge of military men as we can of men of peace. Men who are educated to conditions of strife and war are unlike men of peace. The conditions of war are unlike the conditions of peace. But your military men, even in time of peace, are somewhat governed by their notions of war; they seem to think it necessary that people should suffer—that even women and children should suffer sometimes—assuming it to be necessary in the general progress of events. It may be that the sympathies of heroes who participated in the war of the Piegan Indians may have justified the ripping up of poor Indian women, and decapitating Indian children, and filling them with fear and terror. They seem to argue that it did not make any difference if an old negro woman and a kind and intelligent nurse should be charged with perjury, and indicted and thrown into prison. It makes no difference if a man like Mr. Avery, known and respected in this community, even should he be innocent, that he should be punished. The higher the standing, the more striking the example. How delightful it would be to have Wade Hampton as a vicarious substitute for all the gentle-

men of the South, and put him in the penitentiary for ten years!

It is said that oppression sometimes makes a wise man mad, and it may have made him mad; for has he not had dire oppression in his case, as he lay in a crowded, filthy, poisonous jail, incarcerated in a cell many days while lying on a sick bed, bleeding from wounds and paralysed with cold? It is, then in the confidence of his innocence, that he sends for Uncle Postle, who had charged him with whipping him; sends his wife to find out Postle, and talk to him. The wife's pastor intercedes for the innocent husband; the old servant and faithful nurse, too—and all this is construed into additional conspiracy. An old, faithful negro woman, sixty-six years of age, is charged with intimidating Postle! Gentlemen, is not that cruel? is it not oppression? I had hoped that the Government prosecutor would have thought better than to proceed with such an act as that, but there is not a particle of any such proof in God's world.

Mr. McMaster then adverted to the testimony of the Rev. Mr. Cooper, contending that there was no attempt to intimidate the witness Postle, and that all his assertions to that effect were but the creations of his own imagination. *Mr. McMaster* dwelt at some length on the testimony of Lizzie Chambers and Lizzie Avery, contending that they established, beyond controversy, the fact that Mr. Avery was at home on the night of the alleged raid.

Gentlemen of the Jury: I know I have made out my case to an unprejudiced jury; and I know that no jury on the face of God's earth, outside of such a jury as we are obliged to have here, could convict, with such evidence as is before you; and I beg of you not to let the absence of Mr. Avery affect you; do him justice, for he is as bold, kind-hearted, noble man as ever walked on the face of the earth; he fights no man in the dark, but he is always ready to fight any man, with sufficient cause, in the day time. But he is put up here to indulge in midnight raids. He is

known in that entire range of country to be an honest, bold and brave man. He is a man to fight against odds; not to raid on an old man like Sturgis. And yet these poor, ignorant and credulous witnesses connect him with that conspiracy, and speak of recognizing his lame hand, under circumstances that make it an utter impossibility. He is described by witnesses as adjusting the rope over their necks, when the condition of his hand and his utter inability to use it in such a way shows the entire inconsistency and impossibility of much that was testified to in this respect. Gentlemen, you cannot rely upon testimony of this character; besides, it is not in accordance with the admitted character of Mr. Avery. You can tell, from his impetuous look, that, if he went on a raid, he would go in an entirely different manner. If any fighting was needed to be done he would have done it; but these raids are not in his style. If he had been a Ku Klux, he would have been known in that whole country as such. Weak-minded persons may well have become alarmed. Mr. Gunthorpe left that neighborhood, and he tells us that, though, on one occasion, he returned for a day, he heard no more of it. Had it been in active operation, he would most certainly have known it. That is my reply to Dr. Avery being connected with this alleged conspiracy. The truth is, there was no harm in it. The idea that he hung that poor old fool Sturgis and whipped Postle! You cannot convict Mr. Avery of such an offense, unless you are certain he was there; and I hope you will put far from your minds the idea that he was there.

MR. WILSON FOR THE DEFENSE.

Mr. Wilson. Gentlemen of the Jury: Though the departure of my client has given me a sudden and unexpected weight to carry in making his defense, it shall not deter me from an earnest effort to discharge my whole duty, and I hope you, gentlemen of the jury, will not allow it to unduly prejudice your minds, for it is not necessarily a proof of guilt, but may reasonably be attributed to a

feeling of despair that he was drifting to that maelstrom from which none! none! have as yet escaped.

Dr. Avery is indicted for a general conspiracy to violate an Act of Congress, passed May 31, 1870; and what is the first proof adduced by the Government? That he was a member of an organization in 1868. Does it not strike you, gentlemen, as something beyond the range of possibility, that a man can conspire in 1868 to violate a Section of an Act which was not passed until nearly two years afterwards. Besides, it is proved in the case that that organization was solely for home protection. I admit that there were features in this organization of 1868 to remind you of the Ku Kluxing organization of 1870-'71, that has been proven to have had existence. For instance, that this order in 1868 had an oath, had disguises, and the members were required to be armed, in which it resembles the Ku Klux organization, are clearly proven to have existed; but while there are those resemblances there are just as marked differences. There was secrecy, it is true; there were disguises, and there was an oath; but it does not follow that it was anything more than an organization for self-defense. So much for any argument that may be drawn from the character of this organization of 1868; but the Government does not stop here, and I am very far from being through with the argument. The Government says: "You were on a raid, sir, on the night of Friday, the 1st of March; you were in a Ku Klux gown, committing acts of atrocity upon old men, women and children." Gentlemen, I admit, if he was there on the night of the 1st of March, 1871, it is proved that he belonged to the organization. Now comes the great question in this case: was he there?

The first witness offered by the Government was Abram Broomfield, an old man; a man who seemed to be deaf; it was with difficulty that he could hear me; I had to raise my voice to a pitch that would fill this whole building to make him hear me, although he was standing within a few feet of me. What is his testimony? He was sitting

in the fence corner, within ten steps of him, and he heard Dr. Avery's voice. It is remarkable that he could have heard Dr. Avery's voice ten steps off when it was so difficult for him to hear on that stand. Next comes his wife, Emeline Broomfield. She doesn't swear by his voice, but she knew him by his beard. I think, gentlemen, you would not convict any man because he had a beard that the witness thought was his, for many beards are alike. But she says she knew his hand—she saw that hand when Dr. Avery had the line with both hands putting it over Sam Sturgis' neck. Now, what does Sam Sturgis swear? He swears that the man that put the rope over his neck was a black man, and his name was Howard White. Now, gentlemen, she said something else, that he grasped it with both hands. You felt that hand, you saw it, you heard what Dr. Talley, a distinguished physician, of Columbia, testified to, that it was perfectly useless—no muscular power there. It was impossible for him to have grasped that rope with that hand. The next one is Harriet Postle, the wife of Isaac A. Postle. She says she knew him by his make, and by his hand. She caught his hand; that Dr. Avery had hold of the rope in both hands, and while she was trying to pull it down, she caught the hand. Dr. Avery could not have had the hand in that position. The next witness is Isaac Postle. He says he knew Dr. Avery by his being common in his talk. Well, gentlemen, I don't think that any jury would be satisfied that it was Dr. Avery upon that sort of evidence.

Well, now, here is the whole testimony, and if you convict Dr. Avery, you must do it upon that testimony; and if our defense stopped here, would you feel that it was right, upon such uncertain, flimsy and conflicting, contradicted evidence as this, to send a citizen of South Carolina to the felon's cell and the felon's doom? would your duty allow you to do it? Would the practice of the juries of the Anglo-Saxon race of the last two hundred years, wherever that race has been known; would the practice

of your own countrymen, since you have been clothed with the right of American citizens; would you find precedents there to do that, where the evidence is so conflicting, so uncertain? But, gentlemen, we don't stop here; has not Dr. Avery proven to your satisfaction, that on the night of the first of March, 1871, when they say he was on this raid of atrocity, this contemptible cruelty, this trampling babes under feet, and mashing the heads of women, outrages of disgrace to the human race; when they say he was upon that low work, he was by the side of his wife and sick children. You saw Louise Chambers; you saw how she testified, and I must say, that never, since I have been at the bar, have I seen a witness subjected to so thorough, so protracted an examination; and I have never seen a witness come out of it more thoroughly intact and unscathed. There was no ingenuity that the distinguished counsel could exert, that could make her contradict herself. She says, that, on that night, when Samuel Sturgis and Postle were raided upon, that Dr. Avery was at home; that he went to bed about between nine and ten o'clock; that his child was sick; that it was her habit to sleep in one of the out-houses; but that night she slept in the house on account of the sickness of the child. Mr. Cooper tells you that he knew the child was sick; old Kizzy tells you that the child was sick, and Louise was in the house that night.

Gentlemen, I think the evidence of this alibi is so conclusive, that you cannot entertain a reasonable doubt about it; and I would respectfully say to you, that, if there is a reasonable doubt left upon your minds as to Dr. Avery's guilt, then, on your sworn duty, you are bound, as a jury, to render a verdict of not guilty.

MR. CORBIN FOR THE PROSECUTION.

Mr. Corbin. Gentlemen of the Jury: The case before you is certainly a remarkable one. One feature in it, at least, it has never been my experience to meet with before any Court. We have, in the regular course of the administra-

tion of justice, indicted a defendant who has been informed of the charges against him; he has been summoned to answer; placed before the Court and the jury; enters his plea of not guilty; sits by and selects his jury; sits by and hears the testimony; and then, in the darkness of night, flees. Now, gentlemen of the jury, I say to you that, in my judgment, that is a fact to be considered by you. It is something that has occurred before your eyes, in the presence of the Court; and I think, gentlemen, and I believe, that you will agree with me—and so will the rest of mankind in his county or in the country anywhere, when they hear the fact—that a flight under such circumstances is a confession of guilt.

But, gentlemen, we do not rely simply upon the conduct of Dr. Avery. Without noticing the argument of my friends on the other side, except incidentally, I propose to call your attention to the testimony. First, has this offense been committed? Second, who committed it? We showed to you the existence of an organization in 1868. Dr. Avery, by his counsel, is admitted to have been a member; an organization of which it is said, that “any member divulging or causing to be divulged any of the foregoing obligations, shall meet the fearful penalty and traitor’s doom, which is death! death!! death!!! My friends on the other side talk about a peace society. Their witnesses say, “it was a society for mutual protection, but we didn’t see any use for it, and didn’t go any more.”

There is a little piece of testimony that the defendant’s counsel insisted in drawing out from Colonel Merrill; they insisted upon his telling what John Rateree, a member of the Klan of 1868, told him, and he says John Rateree, of Rock Hill, told him that Major J. W. Avery, the Chief of York County, Dr. Avery, his brother, and Iredell Jones, Chief of the Klan at Rock Hill, went on the raid on Mr. Ferris with their Klans, and Governor Fewell testifies that when they came to his door he knocked them down with a fire shovel, and Dr. Avery was one of the men that he

EDWARD T. AVERY.

knocked down. Gentlemen, don't we find in this organization of 1868—this conduct of the three Klans in 1868, of which this defendant was Chief of one—a strong disposition to go on raids. Don't we find this wonderful representative—this gentleman—may God spare the name—going into this same business? Don't we find him covering himself with a mask and sneaking around in the night with his Klan and attempting to shoot colored people in 1868? Is this an open fight—is this a broad daylight fight, where gentlemen meet gentlemen, shake hands and shoot at each other, as the counsel on the other side said was the conduct of Dr. Avery? I tell you, no! gentlemen. We find this scoundrel—this coward and murderer—this everything that is bad—all demonstrated by their own testimony—proving to the world that he is just equal to these Ku Klux operations.

Gentlemen, you have heard the testimony of Lawson B. Davis, who joined this infamous organization in 1870. He says he was told that it was a society for mutual protection, Gentlemen, was there ever a word so abused; so entirely perverted. Was there ever damnation so foul, covered up by as pleasant an appellation as these words, "mutual protection," "home protection?" Mr. Davis says when he got inside of the Klan he found that it was an organization, for what? To protect anybody? No; but to destroy the opposition party; first, by visiting and warning the members; second, whipping them; third, compelling them to leave the country; and fourth, killing them.

Mr. Gunn says the object of the organization was to kill and whip the white and colored Radicals until the Democratic party should be triumphant in that county. Go up in York County and call the name of Charley Goode; will anybody answer? Go and call the name of Tom Roundtree; will anybody answer? Call the name of Anderson Brown; will anybody answer? Call the name of Jim Williams; will anybody answer? No, gentlemen, these prominent colored men are dead, murdered by the Ku Klux

IX. AMERICAN STATE TRIALS.

Klan. Gentlemen, if the organization ever existed, to be handed down through all time as excelling in its atrocities the savages upon our frontier, or the conduct of the people of India, or the atrocities of the savages of the islands, that organization is the Ku Klux Klan.

Now, gentlemen, what is the evidence that connects this distinguished son of South Carolina?—I say distinguished in derision, gentlemen; I don't think he is distinguished except for his crimes. What is the evidence? You have the first evidence in his flight. If he had been an innocent man, he would have sat here, and if you found him guilty, he would have borne it; he would have attempted to show to the President of the United States that he was not guilty; and if the evidence was forthcoming in three months, as was said by the counsel on the other side, there is no question that he would have been set at liberty. But, instead of sitting here like an innocent man, and awaiting the result of his trial, he flees in the night, God only knows where.

Sam Sturgis says he knew that little crooked hand of Avery's. Could he be mistaken? Dr. Avery has presented his hand to you, for which I thank his counsel, and they have put a physician upon the stand to swear that that little crooked hand is permanently fixed in one position; that his fingers are doubled, and that it will never change its position, whether it is up or down.

Mrs. Broomfield says, "I saw that little lame hand, and I at once knew it; and I recognized his whiskers." What is the next proof about him? Why, here is old Postle, an old man, celebrated for his piety. He is a preacher, and his demeanor upon that stand, gentlemen, in my judgment, showed that he was a great deal nearer following that Master—"Christ and Him crucified"—than some other people who were upon the stand. He says, (mind, he is not a swift witness; he does not say I know Dr. Avery was at my house, but) "I think he is the man; I recognized his voice, because it was a common voice to me; I had heard it

EDWARD T. AVERY.

so often," and when he says "we are men of peace"—after they had hung the old man up and taken him down—"we are men of peace and justice"—hanging a man without judge or jury—and "we are men of peace and justice," "I knew his voice."

The other side sent a minister after this man; Mrs. Avery goes after him; they get him to swear to an affidavit written by the reverend gentleman who never preaches against Ku Kluxism, and the affidavit says, in effect: "If your evidence is true, then I am mistaken."

What does Postle's wife say? She knew Dr. Avery by his hand, which she grasped. I tell you, gentlemen, no man or woman living, who has grasped that little lame hand, would ever be mistaken about it.

But, now, let us turn to the other side. Why, the gentleman on the other side [Mr. McMaster] said that you are the most wonderful jury that was ever got together; that such a jury is not recorded in the history of time. But he hopes that you will be able to lift yourselves on this occasion and—what? "Do justice!" In God's name, gentlemen, that is just what we want you to do. But, gentlemen, he didn't intend it in that way; he intended it as a slur upon you, and everybody so understood it. You are all, he says, members of the opposite political party to which this gentleman, his client, belongs; hence, you cannot do him justice—you are prejudiced. How does he know that, gentlemen? I suspect that he weighs you in his own insignificant balance; he judges you by himself. I say to you, gentlemen—it is not harsh for me to say so, when a gentleman can stand up before a jury and talk to them as he talked to you—that, because you are of the opposite political party, (and I don't know whether you are or not,) you cannot do justice to his client; that it is a political question. Great God, gentlemen, is it politics to kill people and to whip people? If it is, let us send this man to the penitentiary, who works politics in this way, and annihilate

the political party that attempts to enforce its principles in this way.

Now, gentlemen, we come to another interesting matter, in which the ministers are engaged. I wish I could find the ministers of York County in better company. It is only a day or two since there was a long article in a New York paper, defending the Ku Kluxing in York County, from Rev. Mr. Latham, of York County. Only a day or two since, we saw a long letter in the Charleston News, from a Rev. Mr. Winkler. He says: "To anybody who knows the facts about this Ku Klux business, he would not be true to his God or his country if he wished well to these prosecutions." What do you think of a minister of this kind? What have you to say for a man who preached Christ and Him crucified—had a commission for that—but who says: "I never said a word against Ku Kluxism. Whipping, killing and murdering could be done, and I say nothing about it, because I don't preach politics?" Is there any surprise that Ku Klux could exist in York County?

The question of whether Dr. Avery was in this conspiracy is to be determined by you, by the testimony given you in this case; and I think, gentlemen, that I am not doing myself injustice or you wrong by saying that I think you will agree with me that the testimony in this case, and the conduct of the defendant and his counsel, show you, equally, that he is guilty.

THE CHARGE AND VERDICT.

JUDGE BOND. Gentlemen, you have heard the Court's directions to the other juries, and the Court does not think it necessary to give you further directions.

The *Jury* retired, and, after the lapse of fifteen minutes, returned a verdict of *Guilty*.

**THE TRIAL OF SYLVANUS, WILLIAM,
HUGH H. AND JAMES B. SHEARER,
FOR CONSPIRACY, COLUMBIA,
SOUTH CAROLINA, 1871.**

THE NARRATIVE.

The four brothers Shearer (Sylvanus, William, Hugh H. and James B.), whose names had occurred very often in connection with the different Ku Klux raids had pleaded not guilty when indicted with the other members of the Ku Klux Klan in York County, South Carolina. But when the leaders had been convicted they withdrew their defense and pleaded guilty. They were questioned by the Court and sentenced to fine and imprisonment.

THE TRIAL.

In the United States Circuit Court, Columbia, South Carolina, December, 1871.

HON. HUGH L. BOND,
HON. GEORGE S. BRYAN, } *Judges.*

December 28.

Sylvanus Shearer, William Shearer, Hugh H. Shearer and James B. Shearer, who had been indicted for conspiracy to prevent negroes from voting, withdrew their former plea of not guilty and pleaded guilty.

D. T. Corbin, United States District Attorney, and D. H. Chamberlain for the United States.

JUDGE BOND. William Shearer, what have you to say in mitigation of punishment?

Shearer. I would like you to be as easy on me as possible, because I did not know anything about this thing that night, the sixth of March.

JUDGE BOND. How came you to be present at that place.

Shearer. Chambers Brown sent me word to meet him that night;

that he was going to have a meeting; he wanted to initiate some men; and me and my brothers went.

JUDGE BOND. But you were not members of the Klan?

Shearer. No, sir; but he said he wanted to take us in that night.

JUDGE BOND. What did you let him take you in for?

Shearer. Well, everybody else was in, and I didn't exactly feel safe without I belonged to it.

JUDGE BOND. You went on the Jim Williams raid?

Shearer. Yes, sir; I was on that raid, but I didn't take any part in that raid.

JUDGE BOND. Where were you when Jim Williams was hung?

Shearer. I was with the horses; all four of us were there with the horses.

JUDGE BOND. Who went with the party that went up to the house?

Shearer. I cannot tell you, sir; I don't know; don't know any of them. They were all disguised. I didn't know any of the party. I was not disguised.

JUDGE BOND. What else was done that night besides hanging Jim Williams?

Shearer. They taken some guns as we came on back.

JUDGE BOND. Whip anybody?

Shearer. No, sir; not to my knowledge. I was on a little raid after that—around by Squire Brown's. We had a meeting at Sharon, and some of them proposed a little spree, and I just went on with the rest. They came around and made Charley Russell dance some; that is about all I knew. Didn't go to do anything—just merely some proposed to go on a little spree, as we was out. Charley Russell is a freedman, sir, that lived at Mr. Ramsay's. He had been doing nothing at all that I knew of. My brothers were with me on that raid. The only raid, sir, that I believe that I was on.

JUDGE BOND. What do you do for a living?

Shearer. I work for it, at farming.

JUDGE BOND. Sylvanus Shearer, what have you to say for yourself?

Shearer. I want you to be as light as possible.

JUDGE BOND. What punishment do you think ought to be meted out to a man who would thrash half a dozen black people in one night for nothing?

Shearer. I don't know; it ought to be right smart to them that done it?

JUDGE BOND. You gave them all the countenance you could. You went with them, to be ready if anybody should interfere with your plans?

Shearer. I went along; but I didn't know where they were going.

JUDGE BOND. What do you think ought to be done to a man who would come to your house and take you out of your bed, at night, and hang you? What sort of an excuse do you think it would be, if somebody who went along with him had urged that he only held horses, and didn't actually put the rope around your neck?

Shearer. I don't know as there ought to be anything done with him.

Judge Bond. Can you read and write?

Shearer. No, sir. I was not in the army, but my brother was in the army.

Judge Bond. William Shearer, what was the parole you took?

Shearer. I don't recollect now. I was glad to get out of it.

Judge Bond. You promised not to take up arms or resist the laws of the United States?

Shearer. Yes, sir.

Judge Bond. You forgot your parole?

Shearer. Yes, sir; that is so; but a man can be scared to forget a good many things sometimes.

Judge Bond. (To James B. Shearer.) How many raids have you been on?

Shearer. I have not been on any but those two that my brother spoke of (William B. Shearer.) There was no oath nor constitution read to us, at all. This oath was just verbal that night we was sworn in—never heard the constitution read—never seed it.

Judge Bond. It didn't make much difference to you what was in the constitution, did it?

Shearer. Well, I guess if I had knowed it, it would have made some difference.

Judge Bond. The judgment of the Court in each of your cases is that you be fined one hundred dollars and be imprisoned for eighteen months.

THE TRIAL OF HENRY C. WARLICK AND OTHERS FOR CONSPIRACY, COLUMBIA, SOUTH CAROLINA, 1872.

THE NARRATIVE.

After the conviction of the leading members of the Ku Klux Klan, a large number of others belonging to it who were also under indictment pleaded guilty and threw themselves on the mercy of the Court. On January 5th these prisoners, to the number of forty-six, appeared before Judges Bond and Bryan and were questioned by them individually as to their connection with the organization. Most of them were found to be ignorant of the real objects of the Klan. Nearly all of them were unable to read or write and some of them testified that they had gone into the order against their will. They received sentences of fine and imprisonment but generally for small amounts and for short terms.

THE TRIAL.

*In the United States Circuit Court, Columbia, South Carolina,
January, 1872.*

HON. HUGH L. BOND, }
HON. GEORGE S. BRYAN, } *Judges.*

January 5.

Of the members of the Ku Klux Klan indicted by the Grand Jury for conspiracy to prevent negroes from voting, and for oppressing and intimidating them in various ways a large number pleaded guilty and appeared in court for sentence. Their names were—Henry C. Warlick, Milus Carroll, Eli Ross Steward, Josiah Martin, William Jolly, Alfred Blackwell, William F. Ramsay, Thomas J. Price, Taylor Vassey, King Edwards, Christenbury Tait, Jesse Tait, Frederick Harris, T. Phillips, William Robbins, Gibeon Canter, D. Lewis Jolly, M. T. Phillips, W. S. Blackwell, Aaron Ezell,

Monroe Scruggs, Alexander Bridges, John Burnett, W. P. Burnett, Stephen B. Splawn, Marion Gardner, Chesterfield Scruggs, Henry Suratt, Andrew Cudd, Martin Hammett, Lewis Henderson, William Self, Charles Tait, Junius B. Tindall, Melvin C. Blackwood, John L. Moore, John Cantrell, Jonas Vassey, James Wall, John C. Wall, David C. McClure, Calvin Cook, Albert P. Clement, Dillard N. Cantrell, Gibeon Cantrell and William Robbins.

Mr. Corbin. May it please your Honors: These prisoners throw themselves upon the mercy of the Court, and I respectfully ask that judgment may be passed upon them. They have come in, voluntarily, to plead guilty. There are, in many of the cases, extenuating circumstances that ought, in my judgment, to appeal to the clemency of the Court. Some of the prisoners are young, many of them are very ignorant, and nearly all claim that they have been driven into this organization by the force of public opinion, by threats, and to save themselves from the visitation of the Ku Klux; in other words, they went to this organization to protect themselves from its violence.

In almost all the cases to which I ask the attention of the Court, the parties have gone upon raids and have assisted in inflicting punishment, more or less severe, upon negroes.

If it were possible to excuse some of them entirely from the just punishment for these offenses, I, for one, would be glad to do it, for I think the responsibility of these outrages rests upon the men of the county who were the leaders and Chiefs of Klans—in many cases, men of property, who have led and controlled these others. These are the ones that ought to be punished. But your Honors know that most of this class who, from their social influence and position, aided in the perpetration of these crimes, have fled the country. They were able to fly, but many of the parties were not, and when it was known amongst them that these charges were made against them, and that proof existed, and was in the hands of the Government, they pleaded guilty, and desired to throw themselves upon the mercy of the Court.

I do not see how it is consistent with the protection of the citizens of that county to allow these parties to escape without some punishment. I do not see how the Government can permit the plea that the force of public opinion in that neighborhood forced them into an organization like this, and that the fear of visitations from the Ku Klux should lead them to enter an organization and join in atrocities such as they confess to, and yet to be held guiltless. The individual responsibility of the citizen before the law seems to be inconsistent with such a plea.

In making these remarks, it is simply to express the desire that a wise and merciful discrimination should be made in favor of those who have been led, seduced or forced into an organization guilty of such inhuman atrocities.

JUDGE BOND. Henry C. Warlick, what have to say?

Warlick. The only raid I was ever on was that on Jim Williams and another; live in York County, and work on a farm; am twenty-two years old; joined the Ku Klux Klan last spring. I started from Robert Eiggans' with him and Bob Shearer. I did not see the hanging; I stayed with the horses; did not see any whipping at all; could not tell how many there were in the party; some of them had disguises; I had on only a false face; do not know any of the superior officers of the Klan.

JUDGE BOND. The judgment of the Court, in your case is, that you be fined \$100, and be imprisoned eighteen months.

JUDGE BOND. Milus Carroll, what have you to say?

Carroll. I have very little to say; I acknowledge being on Jim Williams raid; I never was sworn in till 12 o'clock that day; was told to meet the Klan at Briar Patch; did not know till I got there what was their purpose; understood, after getting there, they were going to McConnellsville after some guns; did not see Jim Williams hung; I was with the horses; I did not see or hear of any being whipped that night, and I don't know who were the men who hang Jim Williams; some of the men were disguised; had a piece of cloth over my face; the Klan I belonged to was said to be Chambers Brown's Klan.

JUDGE BOND. The judgment of the Court, in your case, is that you be fined \$100, and be imprisoned eighteen months.

JUDGE BOND. Eli Ross Stewart, what have you to say?

Stewart. I was on one raid; I joined the Klan called Brown's Klan; Chambers Brown told me to meet at the Briar Patch the night of the Jim Williams raid; there were about thirty to thirty-five on the raid; I understood their object to be to go down to McConnellsville for some guns; did not go to Jim Williams' house; stayed with the horses after the others dismounted; don't know the names of any that went to the house, and I don't know the Chief of the Klan.

JUDGE BOND. Eighteen months' imprisonment and a fine of \$100.

JUDGE BOND. Josiah Martin, what have you to say?

Martin. Mr. Avery swore me into the Klan; I was upon the Jim Williams raid; that was the only one; Napoleon Miller told me I would have to go on that raid; he told me to meet them at the Briar Patch; when the party got off their horses I did not go with them to Jim Williams' house; I stayed with the horses.

JUDGE BOND. The sentence of the Court, in your case, will be a fine of \$100, and eighteen months' imprisonment.

JUDGE BOND. William Jolly, what have you to say?

Jolly. I am about eighteen years old; belong to the Horse Creek Klan; joined last spring; I have only been on one raid; that was on Mary Beman; my brother, Louis Jolly, was with me. I joined the Klan because I was afraid they would whip me if I didn't; my neighbors told me that I had to go in it, or be whipped into it; I was initiated into the Klan by George Scruggs; he told me I had to join; Louis Jolly, Tom Friers and Membrey Humphreys were the only ones on that raid, that I remember.

JUDGE BOND. Alfred Blackwell, what have you to say?

Blackwell. Am nearly twenty-five years old; joined the Horse Creek Klan last March; the Chief was Jonah Vassey; was only on one raid; that was on old Reuben Phillips; there were seven of us; we brushed him for beating another man's steer to death, and throwing it into the branch; 'twas Sam Surratt who said he did it; Phillips was an old black man; we struck him three licks apiece. I can't write or read, and have no "larning;" I went into the Klan because I was scared into it, and I lay out three weeks for fear before I went into it; I did not go to any Justice, or any one else, to tell them I was threatened, because I was afraid that if I went against them in any way, I would get a whipping for it; I thought they would be sure to find it out.

JUDGE BOND. Six months' imprisonment.

JUDGE BOND. William F. Ramsay, what have you to say?

Ramsay. Am about twenty-five years old; belong to the Horse Creek Klan; the Chief was Jonah Vassey; I attended three of the meetings of the Klan; some of the committee would consult, and tell us what was to be done; there never was any order issued for a raid out while I belonged to it. I was on the Reuben Phillips raid; we took him and his wife out and gave them three licks apiece; don't know what we whipped them for; Sam Surratt said that Phillips had killed a steer and threw it in the ditch, and would not pay for it; they told me if I did not go on that raid, when I was ordered, that they would go right for me, and that I would get so many lashes, and would have to pay a fine of five dollars; had been laying out three weeks before I joined the Klan, and my uncle told me I had to join or leave the country; the reason why I did not go to some officer of the law and tell him was because I was afraid to open my mouth about it; know most of those who joined the Klan did it for self-protection; know a good many didn't join voluntarily; it seems to me

IX. AMERICAN STATE TRIALS.

that man who had a good learning and knowledge ought to have taught us better. Can't read or write.

JUDGE BOND. Three months' imprisonment.

JUDGE BOND. Thomas J. Price, what have you to say?

Price. I am twenty-nine years old; Gilbert Surratt swore me into the Klan; I have been on two raids; R. P. Scruggs was Chief; our first raid was on Mary Beman, and the other was on Charley Fernandez and Jack Surratt; there were three of his family whipped that night—his wife, son and daughter; on the first raid there was a negro woman whipped, but that was a light whipping.

JUDGE BOND. What do you mean by that?

Price. I suppose she had about twenty-five or thirty lashes with hickories; we pulled her out of bed; at the raid on Charley Fernandez, we whipped the two girls of his family—they were grown girls; I joined the Klan because I thought I was obliged to; was told I would get into a hobble if I didn't, and perhaps get a whipping; they told me that I had to obey orders, or I'd get into trouble.

JUDGE BOND. I think there ought to be another proclamation of emancipation.

Price. Robert Scruggs ordered me to go on the raid; Bank Lyles, they told me, was Chief of the Klan; can't say that I thought of saving myself by going and whipping negroes and children, but I thought I was bound to join the Klan, and obey orders; and the reason why I didn't tell some of the authorities was that I was afraid to do it.

JUDGE BOND. Why didn't you tell the preachers there about these things?

Price. I didn't know but they might belong to the order.

JUDGE BOND. Six months' imprisonment.

JUDGE BOND. Taylor Vassey, what have you to say?

Vassey. I belong to the Horse Creek Klan; I attended some three or four of the meetings, but there was nothing particular done while I was there; some of them went off and talked to themselves; have only been on two raids; they whipped James Gaffney; and there was another fellow whipped that night—Matt Scruggs, a colored boy; we gave James Gaffney about three licks apiece, he was whipped for stealing; they talked to him right smart, but I don't know that they said anything to him about politics; joined the Ku Klux because I was afraid they would whip me if I didn't; am not able to read or write, and am twenty years old.

JUDGE BOND. Three months' imprisonment.

JUDGE BOND. King Edwards, what have you to say?

Edwards. I was twenty-one years old last April; joined the Horse Creek Klan; can't read or write much; Alfred Harris initiated me; was on six or seven raids; we first went on Dick Roberts; Albert Harris, Jervy Gidney, Thomas Tait, Christenberry Tait, and Jonas Vassey were on the raid; Dick Roberts was a white man; he had been stealing things from another man, and we talked to him; next raid was on John Harris; he was a black

man, and we whipped him a little with hickories; we whipped another black boy whose name was Mage Cash, and we whipped another named Humphries; he was whipped for whipping his young master; we didn't talk to him about politics; we next hunted for Jack Bark, but we didn't find him; Alfred Harris led the first raid, and Jonas Vassey led the other; we made a raid on John Harris, and Billy Scruggs led us that night.

JUDGE BOND. Six months' imprisonment.

JUDGE BOND. Christenberry Tait, what have you to say.

Tait. Belong to the Horse Creek Klan; am going on eighteen years old; cannot read or write; joined it because they shouldn't raid on me; they told me I had better join for fear of being killed; have been on three or four raids; the first was on Richard Roberts; we raided on him because there had been talk about his selling whisky on Sabbath day; he lived near the church, and had a bar room, and we ordered him to stop selling whisky on meeting day; then we went to old Ride's; he was a boy that wouldn't mind his mother, and we told him he had better mind her, and some of them struck him about ten licks with a peach tree switch; do not know but that I have heard that Banks Lyle was Chief of the Klan; William McKinney was taken out just before this thing was broken up, and he would have been whipped if he had not joined.

JUDGE BOND. Three months' imprisonment.

JUDGE BOND. Jesse Tait, what have you to say?

Tait. Joined the Horse Creek Klan last January; never was on a raid in my life; joined the Ku Klux because I thought it would not be safe for me not to; it was Thomas Tait that told me it would not be safe for me if I did not join the order; am an unlearned man, but I never thought about it being violation of law, or anything of the kind to join it. There were very few men there who kept out of the order; they all said they would go into it for self-defense, for they got up a report that the majority in the United States belonged to it, and they said that every man that did not go into it would be forced into it; can't read or write to make much of it; we have lawyers and preachers up there, but I don't know that they talked about this thing; people generally go to church up there; there wasn't much whipping in our neighborhood, for there are very few negroes there; when they were going on that raid, only those that had horses were ordered to go; we are very poor up in that neighborhood, and only few of them had horses; never straddled a horse in my life on any such business, and never had a disguise on or anything of the kind; King Edwards, Alfred Harris, Taylor Vassey, were members of the Horse Creek Klan; live by farming rented land, and I got news here the other day that the gentleman who owns the land was going to dispossess me, and turn my wife out of doors, although she is hardly able to sit up, because I surrendered myself and got myself taken up without being put under arrest.

JUDGE BOND. Take this man's recognizance in five hundred dollars, that he may answer at a future sitting of the Court.

JUDGE BOND. Frederick Harris, what have you to say?

Harris. Belong to the Horse Creek Klan; Jonas Vamey is Chief; Dyke Harris initiated me; joined it for protection and to keep from being whipped; the Ku Klux were whipping all around, and it was a great deal talked about among the people; I have been on two raids, and five were whipped in all; we whipped a colored man named Humphreys; we pulled him out of bed and talked to him—not about politics; we gave him about twenty licks; the next was a colored man named John Harris; the next was Mage Harris, the next Matt Scruggs, and the next James Gaffney; they were colored men; cannot read or write, and I am going on twenty years old. Did not know this was all wrong.

JUDGE BOND. Would you not have thought it wrong if James Gaffney had dragged you out of bed and whipped you?

Harris. Well, I suppose I would have thought hard of it. I didn't know whether it was wrong or not; I was ordered to do it by the committee; I suppose the reason why I did not say I would not join the Ku Klux was because I hadn't sense enough.

JUDGE BOND. Six months' imprisonment.

JUDGE BOND. T. Phillips, what have you to say?

(The articulation of this defendant was so imperfect that it was necessary to use a brother Ku Klux as interpreter.)

Phillips. I never could talk so that anybody would understand me; am going on twenty-five years old; I joined the Du Bond Klan; should not have joined it if I had not been forced into it; they whipped me before I joined the Klan. My brother-in-law said I must join it; it would not be safe for me if I didn't; was initiated by Franklin Ray; cannot read or write; almost everybody belonged to it.

JUDGE BOND. Sentence suspended.

JUDGE BOND. William Robbins, what have you to say.

Robbins. The reason I joined the Ku Klux order was that there was more of my side, the Democrats—than of Republicans. Didn't belong to the Ku Klux order, but they sent me word that they believed I was after something, and so I was. I had said that I thought the thing ought to be put down, but all seemed afraid to take hold of it. The best men and the highest men belonged to the order, and they advised me to join for my protection. Can't say that they would have forced me into it if I had resisted; but it would have been a pretty bad thing, for when they come about you they don't give you much time to do anything. Know, when they first came into my field to get me to join, I threatened to fire into them. Next day, they sent a man to talk to me, and he told me there were two chances for me: one was to join the order; the other was to be abused by them. Don't think there were many in that part of the country that did not belong to it; live about two miles from the North Carolina line; never was on but one raid in my life.

JUDGE BOND. What likelihood is there that the witnesses who

have testified in these Ku Klux cases will be threatened and persecuted when they return to Spartanburg?

Robbins. I would hate to be one and risk it, because I heard leading men there say it would be their day next; I heard them say that when witnesses were called from our neighborhood to go to North Carolina. Gilbert Surratt and Preston Goforth; they are two leading and respectable men; heard them say it when there was a public meeting there and they were in the crowd.

JUDGE BOND. Sentence suspended.

JUDGE BOND. Gibeon Canter, what have you to say?

Canter. Belonged to the Horse Creek Klan, which had about twenty members. Am sixty-six years old; a farmer, have a wife, but no other family. Alfred Harris was Chief of his Klan.

JUDGE BOND. Sentence suspended.

JUDGE BOND. M. T. Phillips, what have you to say?

Phillips. I belonged to the Doe Pond Klan, Franklin Rea was Chief; he was present at four meetings; was on a raid on a colored man named Andy Fernandez; they struck him a few lashes apiece with switches; joined the Klan under two Magistrates in North Carolina, Cleveland County, and asked if it was a violation of the law to belong to the Klan; and they said it was not; never consulted my pastor about the Ku Klux; my Klan whipped Ben Phillips, colored, his wife and daughter, very severely; his daughter was fifteen years old; nearly all the white people of Spartanburg County belonged to the Klans; if they didn't go into it willingly, they were forced into it. If punishment will put down this thing am willing to be punished my part.

JUDGE BOND. Judgment suspended.

JUDGE BOND. D. Lewis Jolly, what have you to say?

Jolly. Belonged to the Limestone Klan; Banks Lyle was Chief; he has run away; was on a raid to take a white man out of jail in Spartanburg, who was sentenced to be hung for killing a negro; also on a raid when Mary Bean was whipped; took her out of bed and whipped her a little for breaking the peace between a white man and wife; didn't whip the white man; the white man's wife got the Klan to whip her; he was a member of the Klan, and was one of these big wealthy men.

JUDGE BOND. Sentence suspended.

JUDGE BOND. W. S. Blackwell, what have you to say?

Blackwell. Was sworn in, but the Klan wouldn't receive me; had tried to recognize the horse tracks of the Klan, and had been sentenced to death by the Grand Klan.

JUDGE BOND. Six months' imprisonment.

JUDGE BOND. Aaron Esell, what have you to say?

Esell. I joined the Ku Klux Klan because they threatened me, and said they would whip me if I did not go into it; have been on only two raids; there were three colored boys that we whipped; was on the raid on Mr. Justice; can read and write but little; am nearly forty years old.

JUDGE BOND. The sentence of the Court is, that you be fined ten dollars and imprisoned one year.

JUDGE BRYAN. Monroe Scruggs, why did you join the Klan?

Scruggs. Well, I suppose, sir, it was for a want of sense; I have never been on but one raid; that was the one where Mr. Harris was whipped; I am going on twenty-one years old, but I can't neither read nor write; I work out for my living, hoeing; I did not know anything about the Ku Klux until I went on that raid, and I didn't want to go on another.

JUDGE BRYAN. The Court, in passing sentence upon you, looks upon your youth; you have not the responsibility of settled manhood, and it is but natural that you should have taken direction from those who were older than yourself, and you may have been impressed by the public sentiment around you. The Court seeks to find palliation for the enormities, the unmanly enormities, that have been committed. Striking men where men could not strike back to protect themselves, and where they had no redress or hope of redress; striking with masks on, and, therefore, striking without any responsibility. Whether these enormities have been committed on men, still more on women, they were wholly unmanly, and let me say utterly un-South Carolinian. Nothing could be so little characteristic of the State; nothing so calculated to bring disgrace upon the State; nothing so calculated to overturn and besmear its ancient, high and bright escutcheon. These stories afflict all men but they peculiarly afflict him who now addresses you; I would be glad to regard them as exceptions; I must esteem them as in great measure exceptional, and I say to you, young as you are, you have brought reproach upon your State, and you have done wrong to its character. The greatest possible wrong that any son of hers could do, would be to besmear and tarnish her ancient renown and reputation. In passing sentence upon you, we cannot but recollect your youth; we cannot but remember the disordered condition of the times; we cannot but recollect that the moral sense of our people, so recently engaged in war, and especially from the disorderly condition of things, may be, to some extent, blighted; we, therefore, feel justified in greatly modifying the sentence which has just been passed upon the prisoner who has arrived at full manhood. The sentence of the Court in your case is, that you be fined ten dollars and confined in prison for six months.

JUDGE BOND. Alexander Bridges, what have you to say?

Bridges. I am thirty-seven years old, and have a family of seven children; have been on two raids; believe there were two or three people whipped; did not want to go on the raid; didn't mean to go, but I happened to meet with them, and so I went; but I didn't do any of the whipping myself. Nobody asked me, and I did not do anything. Why didn't I inform the authorities? I was afraid to; thought they might kill me if I divulged anything. Why didn't I get away? I could not take my family with me; I had to stay.

JUDGE BOND. The sentence of the Court is that you be fined ten dollars and be confined one year.

JUDGE BRYAN. John Burnett, what have you to say?

Burnett. I belong to the Ku Klux; was only on one raid; was twenty-one years old last April; can't read or write, but I can just write my name. Do we take any newspaper in our part of the country? I guess not.

JUDGE BRYAN. Are not the people very poor there?

Burnett. Yes, sir; very. Had never an opportunity of an education, never had no chance; I haven't got neither father nor mother; the Klan only whipped two negroes while I was in it.

JUDGE BOND. The sentence of the Court is that you be imprisoned six months.

JUDGE BOND. W. P. Burnett, what have you to say?

Burnett. I am twenty-seven years old; can't read or write; there are some schools in our part; but I never had no chance to go; have only been on one raid; joined the Ku Klux because they said I would be whipped if I didn't; was obliged to go in to save my own self; the two niggers we whipped we gave about 30 apiece; pretty nigh everybody in our neighborhood belonged to the organization—I mean the laboring people and both classes. The principal people did not go on raids; but they pushed the poor people into it, and made them go; was induced to join, because they came to my house and told me if I didn't I'd have to pay five dollars and take fifty lashes; it was Henry Cantrell that told me this; didn't want to go into it, and shouldn't have gone, but all the neighborhood were obliged to go.

JUDGE BOND. The sentence of the Court is, that you be imprisoned six months.

JUDGE BOND. Stephen B. Splawn, what have you to say?

Splawn. I suppose I belong to the order, though I was never sworn into it; there were some people of our place down at Limestone, and they brought up word about the organisation, and they brought up the oath, or what they called the platform; told them I did not see anything wrong in it; it seemed to me like a vigilance committee, and they were getting them up in all the different neighborhoods, and I said I thought it would be very well for us to have one to protect our neighborhood, for there were some depredations committed around; had nothing to do with getting up the organization; there were some eight or ten joined before I knew anything about it; one day they met, and, after a good deal of cavilment, they settled that I should be their leader; we kept hearing of these offenses that had been committed in York and Union; attended a meeting of the Klan at Limestone, and I there found out that the Grand Klan had given orders for whipping men that didn't comply with their notions; when I returned home, I had a meeting, and I told them what I had found out, and we just disbanded, and said we would have no more to do with it; the object of the Grand Klan was to interfere with voting; don't know that there was anything said about voting, but that was the way I took it; never was on any raid, but I just met one; did not think it was

right to do what they were doing, and anything that was contrary to law I was opposed to.

JUDGE BOND. Did you communicate this experience of yours to the authorities when you found out it was an unlawful organization.

Splawn. I spoke of it in every community I went into. I told a Justice of the Peace of it. Well, he was in it, too. Bank Lyles is the name of the man that presided at Limestone; Sim Moore and Alfred Latham were two more of the men that were there; Alfred Latham was one of the owners of the Cherokee Iron Works.

JUDGE BOND. The judgment of the Court in your case is that you be fined fifty dollars and imprisoned two years.

JUDGE BOND. Marion Gardiner, what have you to say?

Gardiner. I labor for a living. The uniform I have on is an old United States infantry coat; I bought it; have been on one raid, but nothing was done; they didn't find the man they went for; can't either read or write.

JUDGE BOND. The sentence of the Court is that you be imprisoned three months.

JUDGE BOND. Chesterfield Scruggs, what have you to say?

Scruggs. I suppose I am twenty-five years old. It wasn't I, but my cousin, Bob Scruggs, that went on the raid into North Carolina, Mr. Justice; have been on two raids, and whipped two colored boys; the Chief of our Klan is Joseph Vassey.

JUDGE BOND. The sentence of the Court is that you be imprisoned six months.

JUDGE BOND. Henry Suratt, what have you to say?

Suratt. I joined the Ku Klux because they threatened to whip me if I didn't; I shouldn't have joined hadn't it been to have saved myself; I am about twenty years old; they threatened to whip everybody that didn't join the organization; was never on nary a raid; advised them not to go; wasn't goin' to join them, but they said I would have to protect myself; they said I couldn't stay there if I didn't join them; have already been in jail about two months.

JUDGE BOND. What are you going to do to protect yourself when you get home?

The Prisoner. I don't know, sir; they have threatened us enough, I know.

JUDGE BOND. They will be likely to be quiet there in a month; and as you have been confined for two months, the sentence of the Court is, that you be imprisoned for one month.

The Prisoner. I am quite willing to take that to have quiet there.

JUDGE BOND. Andrew Cudd, what have you to say?

Cudd. I am twenty-two years old; can't read or write; have been on two raids; we whipped Jimmie Gaffner and Matt Scruggs; the Chief of the Klan was Jonas Vassey; shouldn't have joined the Klan, but they threatened to whip me, and they abused my folks right smart, and threatened to kill the girl that lived with me; they said if I didn't vote the Democratic ticket they'd give me five

hundred lashes; one of my friends advised me to join it, for he said they would be sure to whip me if I didn't; might have left, but I was so fixed that I could not get away; I had a family, and so had to stay with them.

JUDGE BRYAN. Are there churches in your neighborhood?

Cudd. Yes, sir.

JUDGE BRYAN. Did all the members of the church belong to the organization?

Cudd. Pretty much they did.

JUDGE BRYAN. Did you join in whipping anybody yourself?

Cudd. No, sir, indeed I didn't. I have a wife and three children; pretty much all our Klan are here.

JUDGE BOND. The sentence of the Court in your case is, that you be imprisoned three months.

JUDGE BOND. Martin Hammett, what have you to say?

Hammett. I belonged to the Dopeend Klan, and am twenty-three years old; have been on three raids; the first time we whipped three, the next time one, and the next two; the Chief of our Klan was Frank Ray; had to join the Klan or take a whipping; they called on me before I joined it and threatened to beat me, and took me out and laid me down, and one of them struck me one lick; they said they would come back in two weeks; they said I needn't try to get away, for they would follow me; cannot read or write; am married.

JUDGE BOND. The sentence of the Court is, that you be imprisoned for six months.

JUDGE BOND. Lewis Henderson, what have you to say?

Henderson. I live in Spartanburg district; have only been on one raid, but never whipped a negro in my life; didn't know anything about the raid until they were going on it.

JUDGE BOND. The sentence of the Court is, that you be imprisoned three months.

JUDGE BRYAN. Wm. Self, what have you to say?

Self. The way I come to join the order was that a couple of friends kept at me, wanting me to join, and I kept wisening them to know something about it, and at last he just up and told me just as it was, and said I would have to join it now or else they'd whip me or kill me, or I'd have to leave; on them conditions I joined the order; I was only in the order a short time, and then I quit it, and wouldn't have anything at all more to do with it; I guess I've been on three raids; the first was on Ben Phillips; we struck them three licks apiece. There was two women and one man; the next was on Mr. Roberts, and we went on him; he had a grocery, and had whisky to sell; he was selling whisky on the days of the church; the church was less than half a mile from his house, and there was always a drinking crowd on Saturdays and Sundays, when we went to church; we went to tell him to stop.

JUDGE BRYAN. Were all your Klan members of the Temperance Society?

Self. I don't understand.

JUDGE BRYAN. Do you know what a Temperance Society is?

Self. No, sir.

JUDGE BRYAN. Were they all opposed to drinking whisky?

Self. Well, I was myself. There was nothing said to the niggers we whipped about politics; we next went on a man named Johnnie Green; we didn't do anything to him.

JUDGE BRYAN. Didn't you feel very much ashamed of yourself for acting in this way?

Self. Well, sir, I know I done wrong. I was ordered to do it by the Klan; of course, I didn't feel like it was right. I can't read nor write, nary one. I go to church. The preacher never preached against these whippings. I never heard him say anything about it being wrong.

JUDGE BOND. Didn't they talk about these things in church?

Self. No, sir; I never heard anything about what happened.

JUDGE BOND. They talked about what happened eighteen hundred years ago.

Self. I get my living by farming; I wasn't arrested, but I came here without any warrant at all.

JUDGE BRYAN. We trust you realize how unmanly your conduct has been; you seem to show signs of contrition for your conduct, and, as you say you were forced into the matter, the judgment of the Court is that you be imprisoned three months, including the imprisonment you have already suffered.

JUDGE BOND. Charles Tait, what have you to say?

Tait. I belonged to the Horse Creek Klan; I've been on five or six raids; was on the raid that went on the McKinney negroes; they didn't whip them, but they took their shot guns; and then they whipped Reuben McKinney, Wash McKinney and Henry Scruggs; then I was on the John Harris raid, and the Rutherford raid; Jonah Vassey commanded that raid; then I was on the Sam Gaffney raid; that was commanded by a man named Russell; the reason I joined the order was that they told me it was a good thing to be in it, and that if I didn't join I would be very likely to be driven from the country; can't either read or write.

JUDGE BOND. The sentence of the Court is, that you be imprisoned for eighteen months.

JUDGE BOND. Junius B. Tyndall. What have you to say?

Tyndall. Have been on three raids; was pressed into the order, for they said we had to keep the negroes down; they said they had to keep them from overrunning the white people; then I heard the negroes had drawn guns; it was right smart after that that I went into it; the first raid I went on was for a nigger up at Joe Richards'; the nigger never done me no harm, as I knows on. They made the woman whip the man, and the man whip the woman; the next raid I was on was when they whipped Matt Lockhart; the niggers were going to have a picnic on a widow woman's place, and going to have a frolic and dancing, and they didn't want them to have it, and so they were whipped. Am nineteen years old, but I can't read or write.

JUDGE BOND. The judgment of the Court is, that you be imprisoned one year.

JUDGE BRYAN. Melvin C. Blackwood, what have you to say?

Blackwood. I belong to the order, but have only been on one raid; that was on Ben. Phillips; am nineteen years old, but can't read or write; get my living by hiring from place to place about; Philip Rubens was the first man that told me I must join. Frank Ray was the Chief; he swore me in; the reason I didn't know better was that I had nobody to tell me, and the reason I didn't tell anybody I was in it, was that any one that told anything about it wouldn't have been safe.

JUDGE BRYAN. Looking to your extreme youth, and judging by your countenance, and seeing that you have had little connection with these outrages, the sentence of the Court is, that you be imprisoned for two months.

JUDGE BOND. John L. Moore, what have you to say?

Moore. Have been on some four or five raids, I reckon; was only three months in the order; one of the raids was on Dick Roberts, and another was on the McKinney niggers; one was on Reuben Phillips, and the other was on Alfred Blackwell. There was some four or five beaten on the night of the raid on the McKinney niggers; the next time was on Reuben Phillips; there was three whipped that night; the next raid was on Alfred Blackwell; he had it done himself; his wife would not stay at home, and he wanted her to stay at home and cook, while he was making a crop, and he spoke to some of the boys and they raided on them; but they only gave her one or two licks, with a pine bough; I can't read or write a bit; the reason I joined the order, was, I suppose, because I hadn't sense to do any better; nobody that know'd any better didn't tell me.

JUDGE BOND. The sentence of the Court is, that you be imprisoned eighteen months.

JUDGE BOND. John Cantrell, what have you to say?

Cantrell. Am nineteen years old; can read printing a bit, but I can't write; my father belongs to the Ku Klux; I've been on two raids; one was the Blackwell raid; didn't see any whipped on the Blackwell raid; but there was one whipped on the other raid. Why did I go into this thing? I was just persuaded into it by a man by the name of Gilbert; he is now moved off, and I don't know where he is.

JUDGE BOND. The sentence of the Court is, that you be imprisoned for three months.

JUDGE BOND. Jonas Vassey, what have you to say?

Vassey. I belonged to Dan Harris' Klan, and they throwed him over, and I was Chief; the Klan went on three raids after I was elected Chief; I am twenty-five years old.

JUDGE BOND. Do you know anything about this man, Mr. Corbin?

Mr. Corbin. There is one thing to be said, perhaps, in his favor, that, instead of running away, like the other Chiefs, he came in

and said he proposed to take the consequences, and he has given much information to the authorities.

JUDGE BOND. The judgment of the Court, in your case, is, that you be imprisoned for one year, and fined ten dollars.

JUDGE BRYAN. James Wall, what have you done?

Wall. I have been on two raids; the Chief was Aaron Duncan.

JUDGE BOND. When you saw what this order was, why didn't you tell some Justice of the Peace?

Wall. They said if I did they would kill me; that was the oath.

JUDGE BOND. Do you ever read the newspapers?

Wall. Yes, sir; sometimes.

JUDGE BOND. Have you ever been out of the State of South Carolina?

Wall. Yes, sir; I have been to Virginia in the time of the war.

JUDGE BOND. You ought to have had better sense than this; you can read and write, and read the newspapers, and have been out of the State; that is one advantage you have had; who is going to put in your crops for you this spring?

Wall. I have not got anybody.

JUDGE BOND. Had these people you whipped ever done you any harm?

Wall. No, sir; the Chief just went on and whipped him because he was telling a lie about the guns; asked him if he had any guns and he said he hadn't.

JUDGE BOND. What was that your business whether he had a gun or not? Hadn't you a gun?

Wall. Yes, sir; I had guns of my own at home.

JUDGE BOND. Now, you see the condition of the thing is just this: If we punish you, as you ought to be punished, there is nobody to cultivate your place; if we do not, you will go to Ku Kluxing again.

Wall. No, sir; won't go any more.

JUDGE BOND. How are you going to help it? The Chief will come around and tell you to go, and you will go.

Wall. No, sir; I wouldn't go.

JUDGE BOND. Then he will whip you.

Wall. Then I will have to take it—but I think Ku Kluxing is done broke up in my county now.

JUDGE BOND. You didn't help to break it up though. I am going to trust you this time, in order to allow you to put in your crop next spring; I am going to imprison you for three months; you ought to go for about eighteen months; I am doing what you didn't do; I am having some consideration for your wife and children; but you had no consideration for other people's wives and children; but I have the happiness of being from a different State.

JUDGE BRYAN. The Court has been very much puzzled to reconcile justice with humanity. It is an extreme exercise of mercy to you, that they announce this judgment.

JUDGE BOND. John C. Wall, what have you to say?

Wall. I have been on three raids; can read and write; learned in school in Spartanburg.

JUDGE BOND. The judgment of the Court is, that you be imprisoned three months.

JUDGE BOND. Lewis Jolly, what have you to say?

Mr. Corbin. Do you know anything about the Owen murder?

Jolly. No, sir.

Mr. Corbin. Haven't you told people you were there?

Jolly. Yes, sir.

Mr. Corbin. Why did you tell it?

Jolly. It was done through a joke?

Mr. Corbin. Owen was a Republican, if the Court please, in Union County, who was rudely murdered, a year ago this fall, by the Ku Klux.

JUDGE BOND. I think this person should be held until the question can be tried. It is a very queer thing to joke about.

The following persons were also sentenced, as follows:

David C. McClure, three months' imprisonment.

Calvin Cook, three months' imprisonment.

Albert P. Clement, three months' imprisonment and ten dollars
10.

Dillard N. Cantrell, three months' imprisonment.

Gibson Cantrell, one year's imprisonment.

William Robbins, six months' imprisonment.

JUDGE BOND. Prisoners at the Bar: You have pleaded guilty to an indictment which charges you with conspiring with other men throughout this State to intimidate a certain class of voters, by means of threats, beating, and even killing, because that class of citizens were opposed to the conspirators in political opinion.

We acknowledge great perplexity in determining what punishment shall be meted out to you. We have no words strong enough to signify our horror at the means employed to carry out the purpose of the Klans. Our difficulty is personal to you.

You have, as it appears from your statements to the Court, been brought up in the most deplorable ignorance. At the age of manhood, but one or two of you can either read or write, and you have lived in a community where the evidence seems to establish the fact that the men of prominence and education—those who, by their superiority in these respects, establish and control public opinion—were, for the most part, participants in the conspiracy, or so much in terror of it, that

you could obtain from them neither protection nor advice, had you sought it.

There is abundant proof of the nature and character of the conspiracy. Evidence of nightly raids by bands of disguised men, who broke into the houses of negroes and dragged them from their beds—parents and children—and, tying them to trees, unmercifully beat them, is exhibited in every case. Murder and rape are not unfrequent accompaniments, the story of which is too indecent for public mention. The persons upon whom these atrocities are committed are almost always colored people. Whatever excuse is given for a raid, its conclusions was almost always accompanied by a rebuke for the former exercise of the suffrage and a warning as to the future exercise of the right to vote.

But what is quite as appalling to the Court as the horrible nature of these offenses is the utter absence, on your part, and on the part of others who have made confession here, of any sense or feeling, that you have done anything very wrong in your confessed participation in outrages which are unexampled outside of the Indian territory.

Some of your comrades recite the circumstances of a brutal, unprovoked murder, done by themselves, with as little apparent abhorrence as they would relate the incidents of a picnic, and you yourselves speak of the number of blows with a hickory, which you inflicted at midnight upon the lacerated, bleeding back of a defenseless woman, without so much as a blush or sigh of regret. None of you seem to have the slightest idea of, or respect for, the sacredness of the human person. Some of you yourselves have been beaten by the Klans without feeling a smart, but the physical pain. There appears to be no wounding of the spirit; no such sense of injury to yourself, as a man, as would be felt by the humblest of your fellow-citizens in any other part of the United States with which I am acquainted.

There, the citizens upon whom such outrages were perpetrated, stung to madness by the insult to his mankind, would be swift to follow the wrongdoer to the end of the

world to make him atone for it. You make excuse for this in your statement to the Court, that you are very ignorant, that the Klans would have beaten you, and even killed you, had you refused to join them in their crimes. Some of you now particularly before me have actually suffered for your refusal, before you really united in membership with them. The Court, in an endeavor to recognize some features of humanity in you, has considered these facts which you plead as excuses. You have grown up in a country where slavery existed for a long time, and where the whipping post was a standing institution.

To see blacks flagellated was no unusual occurrence. The scene, often viewed, with its novelty, lost its revolting effect. And, when it came to be understood that the human person was not so sacred in the colored man as to secure immunity from outrage, it did not take it long to lose its sacred character in yourselves, and in all other men who, like the colored man, was obliged to labor. It must be from this cause that your utter indifference to wrongs which, among freemen, would stir a fever in the blood of age, arises.

And then you tell us that you differ from many other portions of the country in this, that it has always been obligatory upon you, and the class to which you belong, to look to persons of wealth and education for command, and that you, in your ignorance, had to follow such persons implicitly.

It will appear strange to your fellow-countrymen, who read your story and that of your confederates, however willing they may be to believe you, that so large a portion of the young white men of your County can be in such a state of abject slavery to the men of property above them, as to be willing to commit murder at their command.

In no case has there been any resistance to these midnight raiders, except on the part of the colored people.

You say some of you "laid out" in the woods night after night, and have hidden yourself in thickets to escape these marauders. None of you, however, have had the manliness to defend your firesides from the assaults of these lawless men.

There has not been, on your part, so far as the evidence shows, an assault and battery committed in defense of family and home, and all that freemen hold dear.

Admitting all you have said to the Court to be true, while the story of your condition and of your participation in these outrages through fear is painful enough, the facts do not excuse you. They may palliate, in some degree, your offense, but they cannot justify you. The punishment the Court awards you is partly inflicted, that you may learn that no amount of threats or fear of punishment will justify a man in unprovoked violence to another, unless the danger threatened to the wrongdoer be imminent or actually present at the time of his wrong doing, and even then the danger must be of present great bodily harm, and of death itself, before some of the criminal conduct confessed would be justified.

It does not excuse you for participating in this conspiracy, and raiding upon inoffensive colored people, dragging them from their beds, beating some and hanging others, that you had notice, if you did not join, the Klans would visit you.

You are bound to run the risk or seek means of protection, rather than do violence to your neighbor. The law and your fellow-citizens look to you to make this threat of violence difficult of execution, by a many resistance or an enforcement of the law. You had no right, when you could escape, to make the price of your security the violation of your neighbor's.

You and your confederates must make up your minds either to resist the Ku Klux conspiracy or the laws of the United States. They cannot both exist together; and it only needs a little manliness and courage on the part of you ignorant dupes of designing men, to give supremacy to the law. Be assured it will not be taken as an excuse in your case, or in any other, to hear it said: "I slew this man because the chief ordered it, and I was afraid," and " 'brushed' and raped these others because I dreaded to be whipped if I did not."

**THE TRIAL OF F. W. McMASTER FOR CONTEMPT OF COURT, COLUMBIA,
SOUTH CAROLINA, 1872.**

THE NARRATIVE.

On the last day of the trial of Edward T. Avery—a Monday morning—just as the prisoner's counsel, Mr. McMaster, was beginning his closing address to the jury, the Prosecuting Attorney interrupted him with the question, "I don't notice the prisoner in court, where is he?" to which the attorney replied, "That is for you to find out." The Presiding Judge then asked, "Where is your client, Mr. McMaster?" "I understood," said Mr. McMaster, "when we adjourned on Saturday night that Dr. Avery had gone to see his family and that he would return today." Then the Court asked his other counsel, Mr. Wilcox, if he expected him back. "I expected him to return by the next train. I know nothing save for the information I have received from Mr. McMaster." A third time the Court inquired, "Do you know where your client is and did you know he was going away, Mr. McMaster." The attorney asked to be excused from answering these questions, whereupon the Court ordered him to show cause on a future day why he should not be disbarred for contempt. The trial went on and the prisoner was convicted in his absence (see *ante*, p. 805).

Several days later the question of contempt was argued before the Judges who sat on the Avery trial. Two lawyers appeared for Mr. McMaster; and they contended that he was not bound to answer the questions; that he intended no disrespect to the Court but deemed it his duty to preserve any confidential communication he might have received from his client; and that he was in no sense the custodian of the prisoner who had been allowed to go home over Sunday on giving a bail bond of \$3000; that the remedy of the Government was to collect this amount from the bondsmen of the prisoner who had escaped and not to punish the attorney for refusing to betray his client. To this the United States At-

torneys replied that Mr. McMaster's refusal to answer raised the presumption that he knew of his client's escape and perhaps had even advised it; that an attorney is an officer of the Court concerned in furthering the ends of justice and not in defeating them. And that such knowledge of the client's intention was not such a privileged communication between attorney and client which the law protected from disclosure.

THE TRIAL.

In the United States Circuit Court, Columbia, South Carolina, January, 1872.

HON. HUGH L. BOND,
HON. GEORGE S. BRYAN, } *Judges.*

January 3.

Mr. Corbin read the order of the Court, that F. W. McMaster, attorney, show cause why his name should not be struck from the roll of attorneys, for refusing to state to the Court where his client, E. T. Avery, was, and for whom bail had been taken, at the request of Mr. McMaster. Mr. McMaster was represented by *Mr. Fickling*¹ and *Mr. Waties*.

Mr. Fickling. If it please the Court I will read the answer of Mr. McMaster. In answer to the rule, the respondent replies that, on the occasion referred to, the question propounded by the Court was, "Where is your client?" To which the respondent replies that he hoped the Court would excuse him from answering the question. The respondent denies any intention of showing any disrespect to the Court, or of putting himself in contempt; but he claims certain rights and privileges, as a member of the bar, which are as sacred as those of life and liberty, and which he felt bound to assert. He submits that there was no requirement, on his part, as an attorney, to answer the question propounded, and

¹ FICKLING, FRANCIS WELLMAN. (1811-1887.) Born Hilton Head Island, S. C. Graduated Brown University (R. I.), 1834. Admitted to South Carolina bar, 1838. State Senator, 1857. The following personal incident of this trial is of interest: Mr. McMaster in appreciation of his services sent him a box of plug tobacco. He wrote him his thanks in Latin—which none of the Columbia bar could read—and it came back to him to translate. He was always devoted to the classics and a Greek Testament lay on a table by his bedside for daily use.

that his mere refusal was no contempt. He submits that it was not his duty to become an informer against his client, and, therefore, his refusal to answer was not in contempt of the Court. He submits, further, that he was in no wise the custodian of his client, who was under recognizance of bail, and that he was not admitted to bail at his request, but only upon his application as an attorney, and that bail was allowed, as a matter of right, upon the terms prescribed by the Court.

Your Honors, in submitting the return of Mr. McMaster to the rule of the Court, I am conscious of representing a gentleman of tried honor, integrity and virtue; one who, by a life of purity, has secured the confidence, esteem and respect of all who knew him. Mr. McMaster was one to whom anything mean or low, corrupt or fraudulent or infamous was abhorrent. He was one who was incapable of doing anything which, as a gentleman or man of honor, or as a member of the bar, it would be improper for him, knowingly, to do under such circumstances. I was startled at the magnitude of the charge preferred against my client. It was not simply a rule to show cause why Mr. McMaster should not be attached for contempt, but why his name should not be stricken from the roll of the bar; why he should not be disgraced, degraded, and rendered infamous for all times, as far as it was in the power of the Court to render him.

I would first present the question, was Mr. McMaster's conduct any contempt at all? I would ask your Honors whether the Court regarded it as their prerogative to ask a member of the bar any question which the Court might please to put, and to require thereto a categorical answer.

Contempt was a recognized offense, but it had its limitations. The intention to be discourteous, rude and defiant to the Court, was contempt. Mr. McMaster had no such intention. His reply was in the most courteous terms. It was not even a refusal to answer the Court, but a desire to be excused from answering. But had it been a positive refusal, not discourteous or in any way insulting, would it then have been a contempt?

Contempt was the doing, by an attorney, of that which he had no right to do in the face of the Court. There must be wrong involved. It was quite possible that a question might be asked by the Court which the attorney has not learned to answer.

Comyn's Digest, B, 14, 15, defines contempt, and gives a catalogue of different things which an attorney ought not to do, and for the doing of which an attorney might be punished; but the refusal to answer a question was not among those offenses that came within the rule. He distinctly asserts that there must be some wrong intended or done; something violative of his duty and obligations as an attorney; something corrupt, fraudulent, or some intentional rudeness or insult to the Court. None of which existed in the conduct of Mr. McMaster.

Bacon's Abridgement, Vol. 1, under Letter I, states the grounds upon which an attorney could be charged with contempt, namely, acts showing a base, corrupt or fraudulent intent.

Again, would not affidavits be required to show that Mr. McMaster was in possession of the knowledge which the Court desired him to divulge? Before an attorney could be stricken from the rolls there must be proof of an offense deserving that judgment. No man was bound to accuse himself, and no man could be punished before conviction. There was no crime in refusing to answer a question; it was no violation of moral obligation; there was no collusion or attempt to deceive or defraud the Court.

Again, the Court would not proceed to punish for contempt when the party injured, the United States, had no other redress. The United States had a full and adequate remedy—the forfeiture of the recognizance. Dr. Avery was not a prisoner at the time he left. He had been a prisoner, but had been released, discharged, was at liberty to go where he pleased, subject to the bond he gave. If he was not there he had to pay his bond. That was the only restraint under which he was held.

F. W. McMASTER.

Mr. McMaster was not bound to be an informer; he was in no wise the custodian of the person of Dr. Avery, and in no way responsible for his safe-keeping. He was not morally or professionally bound to declare where he was, even if he knew; indeed, it would have been a violation of his professional confidence, if, knowing, he had confessed.

Had Mr. McMaster attempted to betray the confidence of his client, he would have deserved the reprimand of the Court.

Mr. Corbin said that he and Mr. Chamberlain had not had an opportunity to examine the question, but that they felt very confident that the authorities would bear them out in saying that the refusal to answer implicated Mr. McMaster in the attempt to escape, and in that regard it was unquestionably an interference with the due course of justice. He thought, if time could be granted until Thursday, they could furnish a most complete reply to the return.

January 4.

Mr. Chamberlain. In the matter of the rule against Mr. McMaster, I do not consider myself as appearing here in the capacity of an advocate, but rather in the discharge of a duty that is laid upon me by the Court, as well as in the discharge of my duty as a representative of the Government; for this is a proceeding which affects the discharge and completion of a duty—namely, the prosecution of this case—which we have undertaken for the United States Government.

I think every one who knows me will be assured that I could not press this matter with anything of acrimony or personal ill-feeling toward the gentleman whom this matter more particularly touches, and for whom I have none but the kindest personal feelings.

The facts out of which this proceeding has arisen are not disputed. Upon observing the absence of Dr. Avery, the Court inquired of his attorney if he knew the whereabouts of his client, and his answer was a request to be excused from answering. He was then asked if he had had any communication with his client in reference to his absence.

Mr. Fickling. I think his Honor determined yesterday that he did not propound that question.

IX. AMERICAN STATE TRIALS.

Mr. Chamberlain. I did not know that there was any dispute about the correctness of the phonographer's report.

JUDAS BOND. None whatever. Mr. McMaster was asked if he knew the whereabouts of his client, and then he was asked if he had had any communication with him before going away.

Mr. Chamberlain. The questions are precisely as taken down by the reporter.

"The Court. Do you know where your client is, Mr. McMaster?"

"Mr. McMaster. I beg the Court will excuse me from answering that question.

"The Court. Had you any knowledge from your client that he was going away?"

Which question Mr. McMaster also declined to answer.

It is now claimed that the mere declining to answer these questions cannot be construed into proof that Mr. McMaster was aware of the reason or purpose of his client in absenting himself. In other words, and as distinctly stated by his counsel yesterday, the Court should be required to prove an *aliundi*, to proceed on affidavit, or, by some other method of proof, to ascertain if Mr. McMaster had any complicity in the escape of his client from trial.

It seems to us that, in this matter, Mr. McMaster has exposed himself to the just and necessary inference, in declining to answer this question, that he had knowledge of the whereabouts of his client, and that he had communication with him upon that subject before he left, for he says to the Court, in effect: I cannot answer those questions, because it will criminate myself. His declining to answer those questions, and explain, leads us to the inevitable inference, as the case now stands, that he did know, and that he did have communication with Dr. Avery with reference to his escape. If this be true, it seems to me that there is but one ground upon which Mr. McMaster can protect himself from the consequences of complicity in the escape of this prisoner. It seems to me that he cannot claim that this communication with his client, with reference to this escape, was in the nature of a

privileged communication made by his client to him while in the exercise of his professional duty to that client. Therefore, we meet the very grave question, the all-important question, in this communication, whether such a communication as that is a privileged communication from a client to his professional adviser.

Let us remember that an attorney is an officer of the Court. However widely the popular mind may have strayed from the just conception of the duty of an attorney, he is always considered, in law, strictly as an officer of the Court, an officer of justice; concerned, always, when he is in the discharge of his professional duties, with furthering the ends of justice. That may recall some of us, who are attorneys, from a very wide straying from this correct and just conception of our duties; but it is nevertheless true that we are all of us, as attorneys, as much officers of justice as your Honors are, or as the marshals or other executive officers of your Court are, and equally and always concerned in the protection of law, and in the vindication and execution of justice. Any departure from that line of duty, on the part of an attorney, is a palpable dereliction of duty.

There are, in the discharge of the duties of an attorney, certain communications from client to attorney, which he may not disclose, and which the Court will not allow him to disclose; and the question, to my mind, now seems to be, was the knowledge derived from communications with Dr. Avery to Mr. McMaster the subject of a privileged communication, which this Court may not require him to disclose?

Now, may it please your Honors, if Mr. McMaster was set to defend Dr. Avery against the charge of conspiracy, before this Court, he was the professional adviser with reference to this case, and, with reference to the indictment against his client, that he had conspired with others to violate the laws of the United States. Now, is there anything in that which looks to any complicity with this escape from that trial? Is he defending Dr. Avery, in any just sense of the term, when he connives, conspires or communicates with him in reference

IX. AMERICAN STATE TRIALS.

to his escape from the jurisdiction and authority of this Court? When I undertake to defend a client in this Court, against a charge brought against him, is it competent for me, as his attorney, as an officer set here to further the ends of justice, to communicate with him in reference, not to his trial, but to his escape from trial? not that justice may be done upon him in the matter of receiving a verdict of guilty, or not guilty, but that he may put himself beyond the reach of the Court and prevent justice, either in his behalf or against him, from being attained?

It is true that the privilege of client to attorney is very broad, but it does not cover everything, and it does not conflict with that great duty which the attorney, from the nature of his office, under his oath, holds to a Court of justice.

A good statement, on this general rule, is found in first Greenleaf on Evidence, section 240.

It will be seen that this entirely covers any communication which may have been made to Mr. McMaster for his professional aid or advice upon the subject of Dr. Avery's rights and liabilities. But what was the case upon which Mr. McMaster had undertaken to give professional aid and advice? Was it a question whether it was prudent for Dr. Avery to stand his trial? No, it was upon his rights and liabilities to the law—not how he might escape from the reach of the law, and put himself beyond the power of this Court—professional aid and advice upon the subject of his rights and liabilities, how he shall be defended, what was necessary to constitute a legal defense against this charge, what evidence is admissible and what shall be excluded, and what consideration shall be addressed to the Court in his behalf; yet I understand the claim now to be made that all this embraces advice and communication with reference to his escape from the very forum where his attorney had been standing to defend him. But is that professional aid and advice? Is that advice upon the subject of the rights and liabilities of Dr. Avery in this Court and under this indictment? It clearly is not, but it is communication and advice with respect to his escape from

the very position where Mr. McMaster was stationed and had undertaken to conduct his defense. It was an arrow's flight beyond professional range. It was a confession that the hour for professional advice was gone, and that, having discharged the utmost of his duty, and exhausted the utmost of his ingenuity, the law was pressing upon his client to his conviction. Then Mr. McMaster assumed to step beyond that line, and communicate and advise with his client with reference to his escape.

The limitation upon the sacredness of communication from client to attorney is distinctly stated by the same authority—Greenleaf on Evidence, section 244.

There is no doubt, when this communication was had with Dr. Avery, that the relation of attorney and client existed between those two gentlemen; but the question is, had Dr. Avery's escape anything to do with the professional advice and assistance which Mr. McMaster was bound to give to his client? If, as I have shown you, he could not, in the exercise of the just functions of his office of attorney, have communication, and be privileged in concealing it, then we have here precisely the explanation which is recognized by this authority of communications made while the relation of attorney and client subsists, but still having no relation to the execution and performance of professional duty.

This, therefore, could not have been a privileged communication. It could not have been advice or assistance given by Mr. McMaster to his client, because it was, upon the face of it, a palpable and direct attempt not to act as an officer of this Court; but to act in defiance of this Court, and for the express purpose of enabling his client not to stand his defense and meet his verdict, but to escape beyond the reach of justice.

My friend, yesterday, in his argument in behalf of Mr. McMaster, alluded to the fact that Dr. Avery had been admitted to bail by this Court, and he distinctly advanced the doctrine that the forfeiture of that bond was a complete remedy on the part of the United States; a complete equiva-

lent for the presence of Dr. Avery, and that the United States had chosen to set down the value of Dr. Avery at \$3,000, and that the United States would have its remedy, in the forfeiture of the \$3,000, for the non-punishment of Dr. Avery for this offense. I think I never heard a more dangerous or a more unsupported doctrine advanced in any Court. The idea that the United States, having fixed the bail of Dr. Avery at \$3,000, now receives its equivalent; for my friend distinctly said that there was the alternative, either stand your trial, or pay \$3,000, and Dr. Avery had taken the alternative of paying \$3,000, and, therefore, the United States and Dr. Avery were even. Did the United States, or did your Honors, when you granted that bail and fixed the amount at \$3,000, conceive that that was equivalent for the offense committed? I need not argue that point. The purpose of that bail was simply to enable Dr. Avery, instead of remaining within the prison walls to await his trial, to be at large, and to visit his family and to enjoy his freedom, under that restraint, until the hour when the Government would call him to his trial. It was simply to secure his presence at his trial, and had no reference whatever, and brought about no such relation between the Government and Dr. Avery, that if he chose to pay \$3,000, the Government had no further claims against him; and if this claim was supported, then what right has the marshal with his officers and detectives to be today upon the track of Dr. Avery? We have got his \$3,000, but if my friend's argument is correct, Dr. Avery owes us nothing more; he has taken his alternative, forfeited his \$3,000, and gone. And then his attorney had the right to advise him to it. No, if it please your Honors, he was bound to be here, upon the penalty of the forfeiture of three thousand dollars, to meet his trial. That was the significance of his bond; and it had nothing whatever to do, and does not form the slightest justification for any advice or aid from his attorney in forfeiting that bond, to take himself beyond the reach of the Court.

The general power of a Court to punish the offense and

misbehavior of attorneys is stated in Bacon's Abridgement, Vol. 1, page 506, under the title of Attorney, capital letter H. He says, "that attorneys could be struck from the roll for ill-practice, attended with fraud and corruption, committed against the obvious rules of justice and common honesty."

It has not, I think, been claimed in this matter that it was by accident or neglect that Mr. McMaster's communication with his client arose; although it has been claimed that the Government has another remedy against Dr. Avery, to-wit: the forfeiture of his bond.

4 Cranch's Circuit Court Reports, 503, shows that an attorney was not permitted to evade the fair operation of the law, or impede the course of justice.

The just rights of Dr. Avery were in the keeping and protection of Mr. McMaster, but nothing more. His rights here were to a fair trial, to a full examination of all his evidence, and the opportunity to present every circumstance and every particle of evidence that might be presented in his behalf; but it extended no further. He was bound to protect the just rights of his client, but he was not bound—he was forbidden, by honorable, professional conduct—to attempt to evade the operations of the law, or to defeat the administration of justice.

Has the operation of the law been evaded? Has the administration of justice been defeated? If Mr. McMaster, in his communication with his client, had knowledge of this purpose on the part of his client, then he was not in the discharge of his professional duty. It was in violation of professional duty, and in contempt and scorn of this Court, when he listened to that communication, and gave that advice, and came into this Court to decline to answer those questions.

2 Cranch 379, also 7 Wall. 364, show that attorneys could be proceeded against for disobedience of rules and for ill-practice against the obvious rules of justice and common honesty.

These authorities go distinctly to the point, that it is entirely beyond the discharge of professional duty to attempt,

directly or indirectly, to defeat the administration of justice, or to evade the operation of the law, and that there is no duty which the Court will more jealously and invariably discharge than that of affixing proper punishment for such an offense, on the part of its officers.

Can there be a doubt that, in this instance, the administration of justice has been defeated, and operations of the law evaded?

Mr. Corbin. May it please your Honors: I feel that I need to add but a word to what has been so well said by the Attorney General. It is a delicate and a somewhat trying duty to animadvert upon the conduct of a brother attorney. It is an unpleasant duty, because, if the Court please, we are all officers of the Court, and we are all called brothers at the bar. Our relations are usually and necessarily friendly. Our business communications are constant, and all know how much more agreeable it is to be upon friendly terms with those with whom we have constant business relations. But we sustain another relation, namely, that of fidelity to the Court. We have a duty to perform to the Court, as well as to each other, and it is a duty which we cannot disregard. The Court relies upon us, and it relies upon our honesty, our honor and our fidelity. And we owe another duty to the community in which we live, and that is to sustain the high character of the profession to which we belong. When one of our number steps aside from the high duty which he, as counsellor, owes to the Court, then it becomes a duty, though a painful one, to speak to him as we ought, in vindication of ourselves, the profession and the Court.

What is the necessary and inevitable inference from the reply of Mr. McMaster to the question of the Court? "Do you know where your client is, Mr. McMaster?" "Had you any knowledge that your client was going away?" His reply is: "I decline to answer." The necessary inference from that—and it is one from which neither we nor the Court can escape—and it is the inference which the community will draw, and the world readily understand, and

that is, he did know where his client was; had knowledge from his client that he was going away. The inference is, that he declined answering these questions in order to conceal the flight of his client, and thus aid in his escape. His client was on trial for a felony; much time of the Court had been consumed in the trial; witnesses for and against him had been examined; and when it became apparent that he might probably be convicted, then he, with the knowledge, consent and assistance of his attorney—because concealment is assistance—he seeks safety in flight; and by the aid and assistance of his attorney, defeats the due course of justice. This is the true statement of the case, and we must not seek to cover Mr. McMaster with a mantle of charity; for the common sense of mankind will draw the inferences I have presented, and will adhere to them to the end of time.

Now, I ask, is the conduct of Mr. McMaster consistent with his duty as an attorney and counsellor of this Court? The relation of attorney and counsellor to the Court is one of confidence. The Court relies on his integrity and honor; he is a friend to the Court. If any fraud is being practiced on the Court, he must disclose it; any attempt to cheat or mislead the Court, or defeat the due process of the Court, the attorney or counsellor should inform the Court of it; because his relation to the Court is one of confidence and trust; his oath implies it; he is sworn to faithfully discharge his duties as an officer of the Court. Lord Mansfield says that he sustains these relations to the Court, and that his conduct should be above suspicion. But, I ask, how does this conduct of this gentleman appear when measured by this rule? The gentlemen on the other side argue that, being counsellor for Dr. Avery, he had a right to conceal everything, including his flight, or anything his client might choose to do. But the rule that Mr. Russell lays down, in his work on Crime, Vol. 2, p. 908, is that the privilege of an attorney does not attach to everything that the client may say to his attorney. The test, is, whether it is necessary for carrying on the proceeding in which the attorney is employed. If it was necessary

for his defense, then Mr. McMaster would be excused; but, if not necessary for the purpose of carrying on the proceeding in which the attorney was employed, then his communication was not privileged.

Was it necessary, I ask, to the defense of his client, that he should refuse to tell where his client was, or refuse to disclose the fact of his flight? His flight was the defeat of the progress of the cause. His flight defeated the administration of justice, and robbed the law of its just penalty. Now, if Mr. McMaster was implicated in that, it seems to me that that is the end of the cause. The authority on this point cannot be refuted, and it was repeated in what my assistant, the Attorney General, stated, that unless the communication was necessary to his cause, and connected with his cause and the due conducting of the defense, it was not a privileged communication, and it cannot be said that there was any excuse in this case for refusing to reply.

The very moment the demand was made by the Court, we witnessed the proper conduct of an attorney. What did Mr. Wilson say, when interrogated by the Court? Feeling that he might be implicated in the flight of the defendant, on being asked "Where is your client?" Mr. Wilson replied, "I understood, when we adjourned, that Dr. Avery had gone to see his family, and that he would return today." "Do you expect him back?" asked the Court. "I have had no interview with him, but I expect him to return by the next train; I know nothing save from information I received from Mr. McMaster." Here, if the Court please, is proper conduct on the part of an attorney. Under the circumstances, he feels that the flight of the defendant may be attributed to him, and he hastens to assure the Court that he knew nothing about it, but expected him here. He is ready and willing to disclose the honest relation of himself with his client, so far as the Court deemed such information necessary to the protection of the cause. Mr. Wilson, in his frank avowal to the Court and the counsel on our side, says, in effect, "I hope you will not suspect that I am implicated in the flight of this defendant."

Such conduct is precisely what we have a right to expect from an honorable attorney. Now contrast it with that of the other gentleman. "I hope the Court will excuse me from answering." "Do you know anything about your client?" Again we hear, "I hope the Court will excuse me from answering." Why does the Court want to know? The Court cannot go on without the defendant. We are proposing to go to the jury, and to ask the jury to pass upon this defendant. Without the defendant the result of the trial will be a nullity, and why shall the Court lose time? Why should the attorney withhold all information with reference to his client? Where he is and whether or not he proposes to return, but for the obvious reason that if his flight is not concealed, and we are informed, then his flight will fail, and the man will be brought back and placed in the custody of the Court, and justice be meted out to him.

Now, I say, that if such conduct does not meet with reprehension from this Court it will certainly meet with condemnation from the public at large. I feel, as a member of the bar, and interested in the reputation of attorneys, that such conduct cannot pass without the reprehension of the Court. I feel that it is the duty of the Court to maintain the honor and integrity of the bar; and if misconduct is seen in the case of any attorney, then the Court will purge the bar and not compel us to all stand together. The Court knows how popular it is, outside of our profession, to attribute all sorts of low practices and designs to members of the bar. We know full well it is unjust in many instances, but I hope this Court will not aid that public sentiment, but will say, now that this case has been brought to its attention, that the misconduct of attorneys of this Court, their interference with, or their connivance at, the defeat of justice shall be punished, and that such practitioners shall be thrown over the bar of this Court. In that way the Court will protect itself, will protect the integrity of the bar, and not permit attorneys hereafter to interfere with, or connive at, or assist criminals in escaping from the meshes of the law.

Mr. Waties. The present question is not only of great gravity to the respondent, but reaches far beyond the individual and the present hour; it concerns every individual of the commonwealth. It concerns every member of the bar, as well as it does the respondent.

I would first endeavor to show the sufficiency of the return to the rule. The rule requires that the respondent should show cause why his name should not be stricken from the roll of attorneys of this Court for contempt in refusing to state the whereabouts of his client, E. T. Avery, for whom bail had been taken at the request of Mr. McMaster.

Now Mr. McMaster utterly disclaims any intention to show disrespect or contempt to the Court by his refusal to answer. But the respondent justified his refusal to answer upon the broad ground that the Court had no right to demand an answer, or, in other words, that the Court had no right to put the question. If the Court had no authority to ask the question, there could certainly be no contempt on the part of the respondent in refusing to answer.

But supposing, for the sake of argument, that the question of the Court was legal and legitimate, but that the respondent honestly believed that it was not, and that, therefore, he was justified in refusing to answer, would their Honors hold him in contempt for a mere error of judgment? Before their Honors would strike an attorney from the roll, they would first have to decide that he was mistaken as to his rights and privileges, and, if they so decided, and he was bound to answer that or any questions propounded, then they would certainly excuse him from contempt, if he honestly made the mistake. But it was contended that he was not mistaken as to his right.

To find the respondent guilty of contempt, their Honors would first have to find that the Court was authorized to demand of him, as an attorney, an answer to the question as to disclosing the whereabouts of his client; and, secondly, that his honest error of judgment, in refusing to answer, was no excuse for refusing to answer; thirdly, that his first and high-

est duty, as an attorney, was not to his client; and, fourthly, that he was not honest and conscientious in the discharge of his duty to that client.

Viewing this as a privileged communication between the attorney and client, on what principle could the Court demand that the respondent should answer the question? Was it not contrary to the practice of Courts? Was it not rather the province of the Court to prevent an attorney from disclosing the secrets of his client? How much worse would it be were the Court to attempt to force him to disclose? Greenleaf, Vol. 1, par. 331, said that what an attorney learned as counsellor or attorney, he was not obliged or permitted to disclose. Mr. McMaster was asked the whereabouts of Dr. Avery. If Dr. Avery told him, it was a secret confided to him by his client, and he was not permitted to reveal it. Greenleaf says this was the rule of the law for the protection of the client; and the best way in which Mr. McMaster protected his client was to keep his mouth shut.

Greenleaf further said, p. 332, that no Court would permit an attorney to disclose his client's secrets; and, if he attempted to disclose them, he would be struck from the roll. The rule which Lord Eldon applied to prevent an attorney from disclosing the confidential communication of his client, their Honors would not surely apply, to force him to disclose them.

If the seal of the law was placed on Mr. McMaster's lips, it was there still; and it must remain there forever, unless removed by the client himself; and the Court would keep it there, for, as Lord Eldon said, they would not permit him to remove it.

It was better that the interests of criminal justice should suffer than that this rule and law of professional confidence between counsel and client should be weakened or impaired, in the slightest degree. It was better that a criminal should escape than that the seal of confidence should be broken.

The greater the secret the greater the confidence; the more important the communication made to the counsel by the cli-

ent, the more is he, in honor, bound to keep it, both in honor and in law. How else could there be any confidence between attorney and client?

Such a disclosure as Mr. McMaster was asked to make would not only be a violation of privilege, but would be contrary to law, and would work a manifest injury to society.

I have the privilege of construing that rule, and I do construe it in favor of my client—of my friend—for if he were my client I might be called upon by the Court to reveal something.

The District Attorney and his colleague go outside of the rule in their effort to correct this respondent. They contend that Colonel McMaster's refusal to answer shows complicity in aiding Avery to escape—this refusal to divulge a privileged communication shows complicity in Avery's escape. May it please your Honors, in the first place, it is denied that there was any escape. Dr. Avery was out on bail, and free to go where he pleased.

Mr. McMaster stands before you today, may it please your Honors, as pure, upright and conscientious an advocate as there is at this bar. He has acted throughout this whole matter as became an honorable man and a worthy attorney of this Court. He has nothing to blush for, nothing to regret, nothing to retract. He can say, with Luther, when called on to recant before the Diet of Worms, "I cannot; I may not recant, because it is neither safe nor well advised to act in any way against conscience. Here I stand. God help me. I cannot do otherwise."

NO JUDGMENT RENDERED.

JUDGE BOND took the matter "under advisement," and so kept it to the day of his death.²

² Reynold's Reconstruction in South Carolina, p. 210. "Judge Bond heard the arguments on both sides, took the papers and nothing more was heard of it. Judge Bond was a strong Judge and during these trials and other trials of similar kind during those Republican days displayed such partisan methods that he won the reputation of being the 'Jeffries of the American Bench.' His prejudice

and temper, being outwitted by Dr. Avery, caused him to do that which upon more sober reflection he knew was contrary to all precedent and that an order by him disbarring an attorney for such cause would have damned him in the eye of the profession. Upon more sober reflection therefore he pigeonholed or destroyed the papers and so nothing further was ever heard of the case. Col. McMaster continued one of the distinguished members of this bar." Mr. W. A. Clark, *ante*, p. 805.

McMASTER, FITZ WILLIAM. (1826-1899.) Born Winnsborough, S. C. Graduated University of South Carolina, 1847; admitted to bar (Columbia) 1852; Colonel 17th Reg. S. C. Vol. Confederate Army; trustee State University; member House of Representatives; State Senator, 1886-1890; Mayor of Columbia, 1890.

THE CASE OF JOHN MERRYMAN ON HABEAS CORPUS, BALTIMORE, MARYLAND, 1861.

THE NARRATIVE.

At two o'clock on the morning of May 25, 1861, the residence of John Merryman in the city of Baltimore, was entered by armed men and he was taken from his bed and conveyed to Ft. McHenry, where he was delivered into the custody of the commandant there, General George Cadwallader. This was early in the Civil War, and Merryman was a notorious Southern sympathizer and copperhead, who had been talking treason, and annoying the Federal authorities. His friends at once employed lawyers, and obtained from the Chief Justice of the United States a writ of habeas corpus, commanding General Cadwallader to bring the prisoner before him in court the next day, and explain by what authority he was detaining Merryman in prison. But when the Chief Justice was ready to receive the excuses of the General the next morning, he did not appear, but in his stead there came Colonel Lee, his aide-de-camp, who read the General's response to the writ, which was to the effect that Merryman had been arrested by the order of the military authorities for disloyal acts and sentiments, and that President Lincoln had notified him that he had suspended the writ of habeas corpus, and instructed him not to obey it. This did not satisfy the Chief Justice at all; for he at once ordered the marshal to arrest the General and bring him before him for contempt of court. However, this was of no avail, for the marshal was forced to report the next day that when he went out to the prison to arrest General Cadwallader he could not get in, and had to come away empty handed. Then the Chief Justice of the United States was obliged to bring the proceedings to a close, declaring that while the military authorities had no legal right to imprison Merryman, and President Lincoln

had no constitutional right to suspend the writ of habeas corpus, yet the President had the army behind him and the Court could not prevail against that.

THE TRIAL.¹

In the Supreme Court of the United States, Baltimore, Maryland, May, 1861.

HON. ROGER B. TANEY,² *Chief Justice.*

May 25.

On May 25, 1861, the following petition was filed in the office of the Clerk of the Supreme Court of the United States by the petitioner's counsel, *George M. Gill*³ and *George H. Williams*.⁴

¹ *Bibliography.* "The Merryman Habeas Corpus Case. Baltimore. The Proceedings in Full and Opinion of Chief Justice Taney. The United States Government a Military Despotism. Jackson, Miss. J. L. Power. 1861."

Baltimore Exchange, May 28-29, 1861.

² See 1 Am. St. Tr., 74.

³ GILL, GEORGE M. (1803-1887.) Born Baltimore, Md. Graduated St. Mary's Seminary, Baltimore, 1819. Studied law, admitted to Baltimore Bar 1823. Practiced for several years at Belair, Harford County, Md.; in Baltimore where he rose rapidly in his profession. In politics, he was formerly a Whig, but during the Know-Nothing regime, he became a Democrat, taking an active part in the popular movement of 1860 which resulted in the election of Geo. Wm. Brown to the mayoralty. He was previously a member of the City Council and during Judge Brown's term was City Counselor. In 1867, was a member of the Constitutional Convention. Supported Breckinridge for the Presidency and was a warm Southern sympathizer during the war. After the war, he was active in opposition to regular Democratic party. Director of several railway companies, Susquehanna, Western Maryland, York and Cumberland, and the Northern Central. Had large practice in commercial and trust business. Died in Baltimore. See *Biographical History Maryland and District of Columbia. Baltimore Sun*, Nov. 21, 1887.

⁴ WILLIAMS, GEORGE HAWKINS. (1818-1889.) Born and died in Baltimore, Md. Educated to enter Harvard but before entering was required to serve eighteen months in the counting room of a foreign shipping merchant. Graduated (B. A.) Harvard, 1839. Studied law in Baltimore under the distinguished William Schley.

IX. AMERICAN STATE TRIALS.

To the Hon. Roger B. Taney,

Chief Justice of the Supreme Court:

The petition of John Merryman, of Baltimore County, and State of Maryland, respectfully shows that, being at home in his own domicile, he was, about the hour of two o'clock, a. m., on the 25th day of May, A. D. 1861, aroused from his bed by an armed force, pretending to act under military orders, from some person to your petitioner unknown; that he was by the said armed force deprived of his liberty by being taken into custody and removed from his said house to Fort McHenry, near to the city of Baltimore, and in the District aforesaid, and where your petitioner now is in close custody.

That he has been so imprisoned without any process or color of law whatsoever, and that none such is pretended by those who are thus detaining him, and that no warrant from any court, magistrate or other person having legal authority to issue the same, exists to justify such arrest, but to the contrary, the same as above is stated hath been done without color of law, and in violation of the Constitution and laws of the United States, of which he is a citizen.

That since his arrest he has been informed that by some order purporting to come from one General Keim, of Pennsylvania, to the petitioner unknown, directing the arrest of some captain in Baltimore County, of which company the petitioner never was, and is not captain, was the pretended ground, as he believes, on which he is now detained.

That the person now so detaining him and holding him at said fort is Brigadier-General George Cadwallader,⁵ military commander of said fort, professing to act in the premises under or by order of the United States.

The petitioner, therefore, prays that the writ of *habeas corpus* may issue, to be directed to the said George Cadwallader, commanding him to produce your petitioner before you, Judge as aforesaid, with the cause, if any, for his arrest and detention, to the end that your petitioner be discharged and restored to liberty, and is in duty bound, etc.

John Merryman.

Fort McHenry, May 25, 1861.

In 1875 was a candidate on the Democratic ticket from Baltimore County for the House of Delegates, but was defeated; again, in 1877 was a successful candidate. Elected in 1879 to State Senate where he was chosen presiding officer in 1882. See Biographical Cycl. Maryland and Dist. of Columbia; Harvard Quincennial Catalog, 1836-1900. *Baltimore Sun*, March 8, 1889, May 28, 29, June 3, 1861.

⁵ CADWALLADER, GEORGE. (1804-1879.) Born and died in Philadelphia. Major General of Volunteers in the Civil War; Commissioner to revise the Military Laws and Regulations and author of "Services in the Mexican Campaign."

JOHN MERRYMAN.

This petition was duly sworn to before the United States Commissioner, by *George H. Williams*, one of the petitioner's counsel, and affidavit was also made by him that he had applied to General Cadwallader for permission to see the written papers, by virtue of which said Merryman was detained in custody, and to make copies thereof, which had been refused him by the said General Cadwallader.

CHIEF JUSTICE TANEY issued an order directing "that the writ of *habeas corpus* issue in this case as prayed," and that the same be directed to General George Cadwallader.

The writ was accordingly issued by the *Clerk* of the Court, as follows:

The United States of America,
Department of Maryland, to-wit:

To General George Cadwallader, Greeting:

You are hereby commanded to be and appear before the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, at the United States Court room, in the Masonic Hall, in the city of Baltimore, on Tuesday, the 27th day of May, 1861, at eleven o'clock in the morning, and that you have with you the body of John Merryman, of Baltimore County, and now in your custody, and that you certify and make known the day and cause of the capture and detention of the said John Merryman; and that you then and there do submit to, and receive whatsoever the said Court shall determine upon concerning you, on their behalf, according to law, and have you then and there this writ.

Witness, the Hon. Roger B. Taney, Chief Justice of the Supreme Court, the fourth Monday in May, in the year of our Lord, 1861.

Issued 26th May, 1861.

Thomas Spicer,
Clerk Circuit Court.

May 27.

Today at eleven o'clock a. m. the CHIEF JUSTICE appeared in Court and directed the *Marshal* to make his return in the case.

The *Marshal* replied that the writ had been served, but as yet there was no return prepared. The *Clerk* was directed to prepare it.

Colonel Lee, Aide-de-Camp of General Cadwallader, appeared in court. He stated that, in the absence of General Cadwallader, who was unavoidably detained by pressing en-

gements, he was directed to read to the Court the communication which he held in his hand. It was as follows:

Headquarters Dep't of Annapolis,
Fort McHenry, May 25, 1861

To the Hon. Roger B. Taney,
Chief Justice of the Supreme Court of the United States,
Baltimore, Md.

Sir: The undersigned, to whom the annexed writ of this date, signed by Thomas Spicer, Clerk of the Supreme Court of the United States, is directed, most respectfully states—

That the arrest of Mr. John Merryman, in the said writ named, was not made with the knowledge or by his order or direction, but was made by Col. Samuel Yohe, acting under the orders of Maj. Gen. W. H. Keim, both of said officers being in the military service of the United States, but not within the limits of his command.

The prisoner was brought to this post on the 20th instant by Adjutant James Wittmore and Lieutenant Wm. H. Abel, by order of Col. Yohe, and is charged with various acts of treason, and with being publicly associated with, and holding a commission as Lieutenant in a company having in their possession arms belonging to the United States, and avowing his purpose of armed hostilities against the Government.

He is also informed that it can be clearly established that the prisoner has made often and unreserved declarations of his association with this organized force, as being in avowed hostility to the Government, and in readiness to co-operate with those engaged in the present rebellion against the Government of the United States.

He has further to inform you that he is duly authorized by the President of the United States, in such cases to suspend the writ of *habeas corpus*, for the public safety. This is a high and delicate trust, and it has been enjoined upon him that it should be executed with judgment and discretion, but he is nevertheless also instructed that in times of civil strife, errors, if any, should be on the side of safety to the country.

He most respectfully submits to your consideration that those who should co-operate in the present trying and painful position in which our country is placed, should not, by reasons of any unnecessary want of confidence in each other, increase our embarrassments. He, therefore, respectfully requests that you will postpone further action upon the case until he can receive instructions from the President of the United States, when you shall hear further from him.

I have the honor to be, with high respect,
Your obedient servant,

Geo. Cadwallader,
Brevet Major-General, United States Army Commanding.

The CHIEF JUSTICE. Have you brought with you the body of John Merryman?

Col. Lee. I have no instructions except to deliver this response to the Court.

The CHIEF JUSTICE. The commanding officer then declines to obey the writ?

Col. Lee. After making that communication, my duty is ended, and I have no further power. (Rising and retiring.)

The CHIEF JUSTICE. The Court orders an attachment to issue against George Cadwallader for disobedience to the high writ of the Court, returnable at 12 o'clock tomorrow.

The CHIEF JUSTICE at once wrote and delivered to the Clerk the following order: "That an attachment forthwith issue against General George Cadwallader for a contempt of refusing to produce the body of John Merryman, according to the command of the writ of *habeas corpus* returnable and returned before me today, and that said attachment be returned before me at 12 o'clock tomorrow, at the room of the Circuit Court."

Upon taking his seat, today, the CHIEF JUSTICE asked the Marshal if he had the return to his order of attachment issued yesterday.

The Marshal handed him the following papers, which the Clerk read:

The United States of America,
District of Maryland, to-wit:

To the Marshal of the Maryland District, Greeting:

We command you that you attach the body of Gen. George Cadwallader, and him to have before the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, on Tuesday, the 28th of May, 1861, at 12 o'clock, M., at the Circuit Court Rooms of the United States, in the city of Baltimore, to answer for his contempt by him committed in refusing to produce the body of John Merryman of Baltimore County, according to the command of the writ of *habeas corpus*, returnable and returned before the said Chief Justice this 27th day of May, 1861.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court, the first Monday in December, in this year of our Lord, 1861.

Issued 27th May, 1861.

Thomas Spicer, Clerk.

I hereby certify to the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, that by virtue of the

within writ of attachment to me directed on the 27th of May, 1861, I proceeded on the 28th day of May, 1861, to Fort McHenry, for the purpose of serving the said writ. I sent in my name at the outer gate; the messenger returned with the reply, "that there was no answer to my card." I, therefore, could not serve the writ as I was commanded.

So answers

Washington Bonifant,
United States Marshal for the District of Maryland.

CHIEF JUSTICE TANEY. Mr. Deputy Marshal Vance, then the writ is not answered?

Deputy Marshal Vance. There was no answer, sir, except that there was no reply to my card. I was not permitted to enter the outer gate.

CHIEF JUSTICE TANEY. Well, you should state that. The fact does not appear in your return.

Mr. Vance amended the return in compliance therewith.

CHIEF JUSTICE TANEY. Gentlemen, I shall feel it my duty to enforce the process of the Court. I ordered the attachment, yesterday, because, upon the face of the return, the retention of the prisoner was unlawful upon two grounds:

1. The President, under the Constitution and laws of the United States, cannot suspend the privilege of the writ of *habeas corpus*, nor authorize any military officer to do so.

2. A military officer has no right to arrest and detain a person, not subject to the rules and articles of war, for an offense against the laws of the United States, except in aid of the judicial authority, and subject to its control—and if the party is arrested by the military, it is the duty of the officer to deliver him over immediately to civil authority, to be dealt with according to law.

I forebore yesterday to state orally the provisions of the Constitution of the United States, which make these principles the fundamental law of the Union, because an oral statement might be misunderstood in some portions of it, and I shall therefore put my opinion in writing, and file it in the office of the Clerk of the Circuit Court in the course of this week.

In relation to the present return, it is proper to say that

JOHN MERRYMAN.

of course the Marshal has legally the power to summon out the *posse comitatus* to seize and bring into court the party named in the attachment; but it is apparent he will be resisted in the discharge of that duty by a force notoriously superior to the *posse*, and this being the case, such a proceeding can result in no good, and is useless. I will not, therefore, require the Marshal to perform this duty. If, however, General Cadwallader were before me, I should impose on him the punishment which it is within my province to inflict, that of fine and imprisonment. I shall merely say to-day, that I shall reduce to writing the reasons under which I have acted, and which have led me to the conclusions expressed in my opinion, and shall report them with these proceedings to the President, and call upon him to perform his Constitutional duty—to enforce the laws, by compelling obedience to the civil process.

A few days later the following written opinion was filed by Chief Justice Taney:

Before the Chief Justice of the Supreme Court of the United States, at Chambers.

Ex parte John Merryman.

The application in this case for a writ of *habeas corpus* is made to me under the 14th section of the Judiciary Act of 1789, which renders effectual for the citizen the Constitutional privilege of the writ of *habeas corpus*. That act gives to the courts of the United States, as well as to each Justice of the Supreme Court, and to every District Judge, power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment. The petition was presented to me at Washington under the impression that I would order the prisoner to be brought before me there, but as he was confined in Fort McHenry, at the city of Baltimore, which is in my circuit, I resolved to hear it in the latter city, as obedience to the writ, under such circumstances, would not withdraw General Cadwallader, who had him in charge, from the limits of his military command.

The petition presents the following case: The petitioner resides in Maryland, in Baltimore County. While peaceably in his own house, with his family, it was, at two o'clock in the morning of the 25th of May, 1861, entered by an armed force, professing to act under military orders. He was then compelled to rise from his bed, taken into custody, and conveyed to Fort McHenry, where he is imprisoned by the commanding officer, without warrant from any lawful authority.

The commander of the fort, Gen. George Cadwallader, by whom he is detained in confinement, in his return to the writ, does not deny any of the facts alleged in the petition. He states that the prisoner was arrested by order of Gen. Keim, of Pennsylvania, and conducted as a prisoner to Fort McHenry by his order, and placed in his (Gen. Cadwallader's) custody, to be there detained by him as a prisoner.

A copy of the warrant, or order, under which the prisoner was arrested, was demanded by his counsel, and refused. And it is not alleged in the return that any specific act constituting an offense against the laws of the United States, has been charged against him upon oath, but he appears to have been arrested upon general charges of treason and rebellion, without proof, and without giving the names of the witnesses, or specifying the acts, which in the judgment of the military officer, constituted these crimes. And having the prisoner thus in custody upon these vague and unsupported accusations, he refuses to obey the writ of *habeas corpus*, upon the ground that he is duly authorized by the President to suspend it.

The case, then, is simply this. A military officer, residing in Pennsylvania, issues an order to arrest a citizen of Maryland upon vague and indefinite charges, without any proof, so far as appears. Under this order his house is entered in the night; he is seized as a prisoner and conveyed to Fort McHenry, and there kept in close confinement. And when a *habeas corpus* is served on the commanding officer, requiring him to produce the prisoner before a Justice of the Supreme Court, in order that he may examine into the legality of the imprisonment, the answer of the officer is, that he is authorized by the President to suspend the writ of *habeas corpus* at his discretion, and, in the exercise of that discretion, suspends it in this case, and on that ground refuses obedience to the writ.

As the case comes before me, therefore, I understand that the President not only claims the right to suspend the writ of *habeas corpus* himself at his discretion, but to delegate that discretionary power to a military officer, and to leave it to him to determine whether he will or will not obey judicial process that may be served upon him.

No official notice has been given to the courts of justice or to the public, by proclamation or otherwise, that the President claimed this power and had exercised it in the manner stated in the return. And I certainly listened to it with some surprise, for I had supposed it to be one of those points of constitutional law, upon which there was no difference of opinion, and that it was admitted on all hands that the privilege of the writ could not be suspended except by act of Congress.

When the conspiracy of which Aaron Burr was the head became so formidable, and was so extensively ramified, as to justify, in Mr. Jefferson's opinion, the suspension of the writ, he claimed, on his part, no power to suspend it, but communicated his opinion to Con-

gress with all the proofs in his possession, in order that Congress might exercise its discretion upon the subject, and determine whether the public safety required it. And in the debate which took place upon the subject, no one suggested that Mr. Jefferson might exercise the power himself, if, in his opinion, the public safety demanded it.

Having, therefore regarded the question as too plain and too well settled to be open to dispute, if the commanding officer had stated that upon his own responsibility, and in the exercise of his own discretion, he refused obedience to the writ, I should have contented myself with referring to the clause in the Constitution, and to the construction it received from every jurist and statesman of that day, when the case of Burr was before them. But being thus officially notified that the privilege of the writ has been suspended under the orders and by the authority of the President, and, believing, as I do, that the President has exercised a power which he does not possess under the Constitution, a proper respect for the high office he fills, requires me to state plainly and fully the grounds of my opinion, in order to show that I have not ventured to question the legality of his act without a careful and deliberate examination of the whole subject.

This clause in the Constitution, which authorizes the suspension of the privilege of the writ of *habeas corpus*, is in the 9th section of the first article.

This article is devoted to the legislative department of the United States, and has not the slightest reference to the Executive Department. It begins by providing "that all legislative powers therein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." And after prescribing the manner in which these two branches of the legislative department shall be chosen, it proceeds to enumerate specifically the legislative powers which it thereby grants, and legislative powers which it expressly prohibits, and, at the conclusion of this specification, a clause is inserted, giving Congress "the power to make all laws which may be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or office thereof."

The power of legislation granted by this latter clause is by its words carefully confined to the specific objects before enumerated. But as this limitation was unavoidably somewhat indefinite, it was deemed necessary to guard more effectually certain great cardinal principles essential to the liberty of the citizen, and to the rights and equality of the States, by denying to Congress in express terms, any power of legislating over them. It was apprehended, it seems, that such legislation might be attempted under the pretext that it was necessary and proper to carry into execution the powers granted; and it was determined that there should be no room to doubt, where rights of such vital importance were concerned, and accordingly, this clause is immediately followed by an enumeration

of certain subjects, to which the powers of legislation shall not extend; and the great importance which the framers of the Constitution attached to the privilege of the writ of *habeas corpus* to protect the liberty of the citizen, is proved by the fact that its suspension, except in cases of invasion and rebellion, is first in the list of prohibited powers—and even in these cases, the power is denied, and its exercise prohibited, unless the public safety shall require it. It is true, that in the cases mentioned, Congress is of necessity the judge of whether the public safety does or does not require it; and its judgment is conclusive. But the introduction of these words is a standing admonition to the legislative body of the danger of suspending it, and of the extreme caution they should exercise before they give the Government of the United States such power over the liberty of a citizen.

It is the 2d article of the Constitution that provides for the organization of the Executive Department, and enumerates the powers conferred on it, and prescribes its duties. And if the high power over the liberty of the citizen now claimed, was intended to be conferred on the President, it would undoubtedly be found in plain words in this article. But there is not a word in it that can furnish the slightest ground to justify the exercise of this power.

The article begins by declaring that the Executive power shall be vested in a President of the United States of America, to hold his office during the term of four years—and then proceeds to prescribe the mode of election, and to specify, in precise and plain words, the powers delegated to him and the duties imposed upon him. And the short term for which he is elected, and the narrow limits to which his power is confined, show the jealousy and apprehensions of future danger which the framers of the Constitution felt in relation to that department of the Government—and how carefully they withheld from it many of the powers belonging to the Executive branch of the English Government, which were considered as dangerous to the liberty of the subject—and conferred (and that in clear and specific terms) those powers only which were deemed essential to secure the successful operation of the Government.

He is elected, as I have already said, for the brief term of four years, and is made personally responsible, by impeachment, for malfeasance in office. He is from necessity and the nature of his duties, the commander-in-chief of the army and navy, and of the militia, when called into actual service. But no appropriation for the support of the army can be made by Congress for a longer term than two years, so that it is in the power of the succeeding House of Representatives to withhold the appropriation for its support, and thus disband it, if, in their judgment, the President used, or designed to use it for improper purposes. And although the militia, when in actual service, are under his command, yet the appointment of the officers is reserved to the States, as a security against the use of the military power for purposes dangerous to the liberties of the people or the rights of the States.

So, too, his powers in relation to the civil duties and authority necessarily conferred on him, are carefully restricted, as well as those belonging to his military character. He cannot appoint the ordinary officers of Government nor make a treaty with a foreign nation or Indian tribe without the advice and consent of the Senate, and cannot appoint even inferior officers unless he is authorized by an act of Congress to do so. He is not empowered to arrest any one charged with an offense against the United States, and whom he may, from the evidence before him, believe to be guilty—nor can he authorize any officer, civil or military, to exercise this power; for the 5th article of the amendments to the Constitution expressly provides that no person “shall be deprived of life, liberty or property without due process of law”—that is judicial process. And even if the privilege of the writ of *habeas corpus* was suspended by act of Congress, and a party not subject to the rules and articles of war was afterwards arrested and imprisoned by regular judicial process, he could not be detained in prison or brought to trial before a military tribunal, for the article in the amendments to Constitution, immediately following the one above referred to—that is, the 6th article—provides that “in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.”

And the only power, therefore, which the President possesses, where the “life, liberty or property” of a private citizen is concerned, is the power and duty prescribed in the third section of the 2d article, which requires “that he shall take care that the laws be faithfully executed.” He is not authorized to execute them himself, or through agents or officers, civil or military, appointed by himself, but he is to take care that they be faithfully carried into execution as they are expounded and adjudged by the co-ordinate branch of the Government, to which that duty is assigned by the Constitution. It is thus made his duty to come in aid of the judicial authority, if it shall be resisted by a force too strong to be overcome without the assistance of the Executive arm. But in exercising this power, he acts in subordinate to judicial authority, assisting it to execute its process and enforce its judgments.

With such provisions in the Constitution, expressed in language too clear to be misunderstood by any one, I can see no ground whatever for supposing that the President, in any emergency or in any state of things, can authorize the suspension of the privilege of the writ of *habeas corpus*, or arrest a citizen, except in aid of the judicial power. He certainly does not faithfully execute the laws if he takes upon himself legislative power by suspending the writ of *habeas corpus*—and the judicial power, also, by arresting and imprisoning a person without due process of law. Nor can any argu-

must be drawn from the nature of sovereignty, or the necessities of government for self defense in times of tumult and danger. The Government of the United States is one of delegated and limited powers. It derives its existence and authority altogether from the Constitution, and neither of its branches, Executive, Legislative or Judicial, can exercise any of the powers of government beyond those specified and granted. For the 10th article of the amendments to the Constitution, in express terms, provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

Indeed, the security against imprisonment by executive authority, provided for in the fifth article of the amendments to the Constitution, which I have before quoted, is nothing more than a copy of a like provision in the English Constitution, which had been firmly established before the Declaration of Independence.

Blackstone, in his Commentaries (1st Vol., 137) states it in the following words: "To make imprisonment lawful, it must be either by process from the Courts of Judicature or by warrant from some legal officer having authority to commit to prison." And the people of the United Colonies, who had themselves lived under its protection while they were British subjects, were well aware of the necessity of this safeguard for their personal liberty. And no one can believe that in framing a government intended to guard still more efficiently the rights and liberties of the citizens against executive encroachment and oppression, they would have conferred on the President a power which the history of England had proved to be dangerous and oppressive in the hands of the Crown, and which the people of England had compelled it to surrender after a long and obstinate struggle on the part of the English Executive to usurp and retain it.

The right of the subject to the benefit of the writ of *habeas corpus*, it must be recollected, was one of the great points in controversy in England between arbitrary government and free institutions, and must, therefore, have strongly attracted the attention of statesmen engaged in framing a new, and, as they supposed, a freer government than the one which they had thrown off by the revolution. For, from the earliest history of the Common Law, if the person was imprisoned—no matter by what authority—he had a right to the writ of *habeas corpus* to bring his case before the King's Bench; and if no specific offense was charged against him in the warrant of commitment, he was entitled to be forthwith discharged; and if an offense was charged which was bailable in its character, the court was bound to set him at liberty on bail. And the most exciting contests between the Crown and the people of England from the time of the Magna Charta, were in relation to the privilege of this writ, and they continued until the passage of the statute of 31st Charles II, commonly known as the great *habeas corpus* act. This statute put an end to the struggle, and finally and firmly secured the liberty of the subject from the usurpa-

tion and oppression of the executive branch of the Government. It nevertheless conferred no right upon the subject, but only secured a right already existing. For, although the right could not justly be denied, there was often no effectual remedy against its violation. Until the statute of the 13th William 3d, the Judges held their offices at the pleasure of the King, and the influence which he exercised over timid, time-serving and partizan Judges often induced them, upon some pretext or other to refuse to discharge the party, although he was entitled to it by law, or delayed their decisions from time to time, so as to prolong the imprisonment of persons who were obnoxious to the King for their political opinions, or had incurred his resentment in any other way.

The great and inestimable value of the *habeas corpus* act of the 31st Charles II, is that it contains provisions which compel courts and judges, and all parties concerned, to perform their duties promptly, in the manner specified in the statute.

A passage in Blackstone's Commentaries, showing the ancient state of the law upon this subject, and the abuses which were practiced through the power and influence of the Crown, and a short extract from Hallam's Constitutional History, stating the circumstances which gave rise to the passage of this statute, explain briefly, but fully, all that is material to this subject.

Blackstone, in his Commentaries on the Laws of England, 3d Vol., 133-134, says: "To assert an absolute exemption from imprisonment in all cases, is inconsistent with every idea of law and political society, and in the end would destroy all civil liberty, by rendering its protection impossible. But the glory of the English law consists in clearly defining the times, the causes, and the extent, when, wherefore, and to what degree the imprisonment of the subject may be lawful. This it is which induces the absolute necessity of expressing upon every commitment the reason for which it is made, that the court upon a *habeas corpus* may examine into its validity, and according to the circumstances of the case, may discharge, admit to bail, or remand the prisoner. And yet early in the reign of Charles I, the Court of King's Bench, relying on some arbitrary precedents (and those perhaps misunderstood), determined that they would not, upon a *habeas corpus*, either bail or deliver a prisoner, though committed without any cause assigned, in case he was committed by the special command of the King or by the Lords of the Privy Council. This drew on a Parliamentary inquiry, and produced the *Petition of Rights*—3 Chas. I—which recites this illegal judgment and enacts that no freeman hereafter shall be so imprisoned or detained. But when in the following year Mr. Selden and others were committed by the Lords of the Council in pursuance of his Majesty's special command, under a general charge of 'notable contempts, and stirring up sedition against the King and the Government,' the judges delayed for two terms (including also the long vacation), to deliver an opinion how far such a charge was bailable. And when at length they agreed that it was, they annexed a condition of find-

ing surerties for their good behavior, which still protracted their imprisonment, the Chief Justice, Sir Nicholas Hyde, at the same time declaring that 'if they were again remanded for that cause perhaps the court could not grant a *habeas corpus*, being already acquainted with the cause of the imprisonment.' But this was heard with indignation and astonishment by every lawyer present, according to Mr. Selden's own account of the matter, whose resentment was not cooled at the distance of four-and-twenty years."

It is worthy of remark that the offenses charged against the prisoner in this case, and relied on as a justification for his arrest and imprisonment, in their nature and character, and in the loose and vague manner in which they are stated, bear a striking resemblance to those assigned in the warrant for the arrest of Mr. Selden. And yet, even at that day, the warrant was regarded as such a flagrant violation of the rights of the subject, that the delay of the time-serving judges to set him at liberty upon the *habeas corpus* issued in his behalf, excited the universal indignation of the bar. The extract from Hallam's Constitutional History is equally impressive and equally in point. It is in Vol. 4, p. 14: "It is a very common mistake, and not only among foreigners, but many from whom some knowledge of our constitutional laws might be expected to suppose that this statute of Charles II enlarged in a great degree our liberties, and forms a sort of epoch in their history. But though a very beneficial enactment, and eminently remedial in many cases of illegal imprisonment, it introduced no new principle, nor conferred any right upon the subject. From the earliest records of the English law, no freeman could be detained in prison, except upon a criminal charge, or conviction, or for a civil debt. In the former case it was always in his power to demand of the Court of King's Bench a writ of *habeas corpus ad subjiciendum* directed to the person detaining him in custody, by which he was enjoined to bring up the body of the prisoner with the warrant of commitment, that the court might judge of its sufficiency, and remand the party, admit him to bail, or discharge him according to the nature of the charge. This writ issued of right, and could not be refused by the court. It was not to bestow an immunity from arbitrary imprisonment, which is abundantly provided for in Magna Charta (if indeed it were not more ancient), that the statute of Charles II was enacted, but to cut off the abuses by which the government's lust of power, and the servile subtlety of Crown lawyers had impaired so fundamental a privilege."

While the value set upon this writ in England has been so great that the removal of the abuses which embarrassed its enjoyment have been looked upon as almost a new grant of liberty to the subject, it is not to be wondered that the continuance of the writ thus made effective should have been the object of the most jealous care. Accordingly, no power in England short of that of Parliament can suspend or authorize the suspension of the writ of *habeas corpus*. I quote again from Blackstone (1 Comm. 136): "But the happiness of our Constitution is, that it is not left to the executive

power to determine when the danger of the state is so great as to render this measure inexpedient. It is the Parliament only, or legislative power, that whenever it sees proper, can authorize the Crown by suspending the *habeas corpus* for a short and limited time, to imprison suspected persons without giving any reason for so doing." And if the President of the United States may suspend the writ, then the Constitution of the United States has conferred upon him more regal and absolute power over the liberty of the citizen than the people of England have thought it safe to entrust to the Crown a power which the Queen of England cannot exercise at this day, and which could not have been lawfully exercised by the Sovereign even in the reign of Charles I.

But I am not left to form my judgment upon this great question, from analogies between the English Government and our own, or the commentaries of English jurists, or the decisions of English courts, although upon this subject they are entitled to the highest respect and are justly regarded and received as authoritative by our Courts of Justice. To guide me to a right conclusion, I have the commentaries on the Constitution of the United States of the late Mr. Justice Story, not only one of the most eminent jurists of the age, but for a long time one of the brightest ornaments of the Supreme Court of the United States, and also the clear and authoritative decision of that Court itself, given more than half a century since, and conclusively establishing the principles I have above stated.

Mr. Justice Story, speaking in his Commentaries of the *habeas corpus* clause in the Constitution, says: "It is obvious that cases of a peculiar emergency may arise which may justify, nay, even require, the temporary suspension of any right to the writ. But as it has frequently happened in foreign countries, and even in England, that the writ has, upon various pretexts and occasions, been suspended, whereby persons apprehended upon suspicion have suffered a long imprisonment, sometimes from design and sometimes because they were forgotten, the right to suspend it is expressly confined to cases of rebellion or invasion, where the public safety may require it. A very just and wholesome restraint, which cuts down at a blow a fruitful means of oppression, capable of being used in bad times to the worst of purposes. Hitherto no suspension of the writ has ever been authorized by Congress since the establishment of the Constitution. It would seem, as the power is given to Congress to suspend the writ of *habeas corpus* in cases of rebellion or invasion, that the right to judge whether the exigency had arisen must exclusively belong to that body." 3 Story's Com. on the Constitution, section 1838.

And Chief Justice Marshall, in delivering the opinion of the Supreme Court, in the case of *ex parte Bollman and Swartwout*, uses this decisive language in 4 Cranch, 95: "It may be worthy of remark, that this act (speaking of the one under which I am proceeding) was passed by the first Congress of the United States, sitting under a Constitution which had declared 'that the privilege of the writ of *habeas corpus* should not be suspended, unless, when

in cases of rebellion or invasion, the public safety might require it." Acting under the immediate influence of this injunction, they must have felt, with peculiar force, the obligation of providing efficient means by which this great constitutional privilege should receive life and activity; for if the means be not in existence, the privilege itself would be lost, although no law for its suspension should be enacted. Under the impression of this obligation they give to all courts the power of awarding writs of *habeas corpus*." And again, in page 101: "If at any time the public safety should require the suspension of the powers vested by this act in the courts of the United States, it is for the Legislature to say so. That question depends on political considerations, on which the Legislature is to decide. Until the Legislative will be expressed, this court can only see its duty, and must obey the laws."

I can add nothing to these clear and emphatic words of my great predecessor.

But the documents before me show that the military authority in this case has gone far beyond the mere suspension of the privilege of the writ of *habeas corpus*. It has, by force of arms, thrust aside the judicial authorities and officers to whom the Constitution has confided the power and duty of interpreting and administering the laws, and substituted a military government in its place, to be administered and executed by military officers. For, at the time these proceedings were had against John Merryman, the District Judge of Maryland, the commissioner appointed under the act of Congress the District Attorney and the Marshal—all resided in the city of Baltimore, a few miles only from the home of the prisoner. Up to that time, there had never been the slightest resistance or obstruction to the process of any court or judicial officer of the United States in Maryland, except by the military authority. And if a military officer, or any other person, had reason to believe that the prisoner had committed any offense against the laws of the United States, it was his duty to give information of the fact, and the evidence to support it, to the District Attorney; and it would then have become the duty of that officer to bring the matter before the District Judge or Commissioner, and if there was sufficient legal evidence to justify his arrest, the Judge or Commissioner would have issued his warrant to the Marshal to arrest him; and upon the hearing of the party, would have held him to bail, or committed him for trial, according to the character of the offense as it appeared in the testimony, or would have discharged him immediately, if there was not sufficient evidence to support the accusation. There was no danger of any obstruction or resistance to the action of the civil authorities, and therefore no reason whatever for the interposition of the military. And yet, under these circumstances, a military officer stationed in Pennsylvania, without giving any information to the District Attorney, and without any application to the judicial authorities, assumes to himself the judicial power in the District of Maryland, undertakes to decide what constitutes the crime of treason or rebellion, what evidence (if, indeed he required

any) is sufficient to support the accusation and justify the commitment, and commits the party, without having a hearing even before himself, to close custody in a strongly garrisoned fort, to be there held, it would seem, during the pleasure of those who committed him.

The Constitution provides, as I have before said, that "no person shall be deprived of life, liberty or property, without due process of law." It declares that "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person and things to be seized." It provides that the party accused, shall be entitled to a speedy trial, in a court of justice.

And these great and fundamental laws, which Congress itself could not suspend, have been disregarded and suspended, like the writ of *habeas corpus*, by a military order, supported by force of arms. Such is the case now before me, and I can only say that, if the authority which the Constitution has confided to the judiciary department and judiciary officers, may thus, upon any pretext, or under any circumstances be usurped by the military power at its discretion, the people of the United States are no longer living under a government of laws, but every citizen holds life, liberty and property, at the will and pleasure of the army officer in whose military district he may happen to be found.

In such a case, my duty was too plain to be mistaken. I have exercised all the power which the Constitution and laws confer on me, but that power has been resisted by a force too strong for me to overcome. It is possible that the officer who has incurred this grave responsibility, may have misunderstood his instructions, and exceeded the authority intended to be given him. I shall, therefore, order all the proceedings in this case, with my opinion, to be filed and recorded in the Circuit Court of the United States for the District of Maryland, and direct the Clerk to transmit a copy, under seal, to the President of the United States. It will then remain for that high officer, in fulfilment of his constitutional obligation, to "take care that the laws be faithfully executed," to determine what measures he will take to cause the civil process of the United States to be respected and enforced.¹

¹ On March 3, 1863, Congress expressly authorized the President to suspend the writ when necessary.

INDEX

•
•
•

•

INDEX

A

AVERY, EDWARD T.

- Trial of, for conspiracy, 805-838
- The narrative, 805
- The Judges, 805
- The Counsel for the prosecution and defense, 806
- The jury, 806
- Mr. Corbin's opening speech, 807
- The witnesses for the prosecution, 807-814
- The witnesses for the defense, 814-819
- Mr. McMaster's speech for the prisoner, 819-830
- The prisoner escapes from court, 820, 806
- Mr. Wilson's speech for the prisoner, 830-833
- Mr. Corbin's speech for the prosecution, 833-838
- The verdict of guilty, 838

B

BIBLIOGRAPHY

- Of John H. Surratt Trial, 2
 - Of Emil A. Meysenburg Trial, 339
 - Of Julius Lehman Trial, 419, 569
 - Of Robert M. Snyder Trial, 454
 - Of Edward Butler Trial, 496
 - Of the Ku Klux Conspiracy Trials, 601, 602
 - Of Merryman Habeas Corpus Case, 880
- BISHOP, CAMPBELL O.**
- Counsel for state in Trial of Emil A. Meysenburg for bribery, 340

Argues questions of sufficiency of indictment, 380-384

His speech to the jury, 404

Counsel for state in Trial of Julius Lehman for perjury, 431

His address to the jury, 443

Counsel for state in Trial of Robert M. Snyder for bribery, 456

His speech to the jury, 481-483

Counsel for state in Trial of Edward Butler for bribery, 500

His speech to the jury, 527

BOND, HUGH L.

Judge in Trial of the Ku Klux Klan conspirators, 593

His charge to the Grand Jury, 598-600

Judge in Trial of Sherod Childers and others for conspiracy, 601

Overrules motion to quash indictment, 603-606

Sentences prisoners to fines and imprisonment, 609, 610

Judge in Trial of Robert Hayes Mitchell for conspiracy, 612

His charge to the jury, 731-734

Judge in Trial of John W. Mitchell and Thomas B. Whitesides for conspiracy, 736

Sentences them to fines and imprisonment, 786

Judge in Trial of John S. Miller for conspiracy, 787

Sentences him to imprisonment and fine, 803

- Judge in Trial of Edward T. Avery for conspiracy, 806
 Inquiries of Counsel as to absence of prisoner, 820
 Cites Mr. McMaster for contempt for aiding escape, 820
 Charges the jury, 838
 Judge in Trial of the Shearer brothers for conspiracy, 839
 Sentences them to fine and imprisonment, 840, 841
 Judge in Trial of 46 Ku Klux conspirators, 842
 The prisoners plead guilty, 842
 The sentences, 844-860
 Judge in Trial of F. W. McMaster for contempt, 862
- BRADLEY, JOSEPH H., JR.**
 Counsel for prisoner in Trial of John H. Surratt as one of the conspirators to assassinate President Lincoln, 4
 His opening speech to the jury, 10-38
- BRADLEY, JOSEPH H., SR.**
 Counsel for prisoner in Trial of John H. Surratt as one of the conspirators to assassinate President Lincoln, 4
 His closing speech to the jury, 39-95
- BRIBERY**
 Trial of Emil A. Meysenburg for, 337-416
 Trial of Robert M. Snyder for, 463-491
 Trial of Edward Butler for, 492-566
 Trial of Julius Lehman for, 567-592
- BRYAN, GEORGE S.**
 Judge in Trial of Ku Klux Klan conspirators, 598
- Judge in Trial of Sherod Childers and others, 601
 Judge in Trial of Robert Hayes Mitchell, 612
 Sentences Mitchell to fine and imprisonment, 735
 Judge in Trial of John W. Mitchell and Thomas B. Whitesides, 736
 Judge in Trial of John S. Millar, 787
 Judge in Trial of Edward T. Avery, 805
 Judge in Trial of the Shearer Brothers, 839
 Judge in Trial of Warlick and forty-five other Ku Klux conspirators, 842
 Judge in Trial of F. W. McMaster for contempt, 862
- BUTLER, EDWARD**
 The political "boss" of St. Louis, 492
 Trial of, for bribery, 492-566
 The narrative, 492-496
 The Judge, 496
 Indicted in St. Louis but place of Trial changed to Columbia, Mo., 560
 The indictment, 497-500
 The Counsel for the prosecution and defense, 500
 The defense demurs to the indictment, 501
 The Judge overrules the demurrer, 502-506
 The defense asks for a continuance, 508
 The Court grants the continuance, 506
 The Trial resumed on November 10th, 507
 Mr. Folk's opening address, 507

INDEX

- The witnesses for the State, 508-516
The witnesses for the defense, 516-521
The witnesses in rebuttal, 521
Judge Hockaday's instructions to the jury, 521
Mr. Bishop's speech to the jury for the State, 527
Mr. Krum's speech to the jury for the prisoner, 528
Mr. Maroney's speech to the jury for the State, 529-544
Mr. Williams' speech to the jury for the prisoner, 544
Mr. Murry's speech to the jury for the State, 544
Mr. Johnson's speech to the jury for the prisoner, 545
Mr. Folk's closing address to the jury, 546-564
The verdict of guilty, 565
The sentence to three years' imprisonment, 565
The verdict set aside by the Supreme Court, 566
- CARRINGTON, EDWARD C.
Counsel for prosecution in Trial of John H. Surratt as one of the conspirators to assassinate President Lincoln, 4
His speech to the jury, 38, 320-333
- CHAMBERLAIN, DANIEL H.
Counsel for United States in Trial of the Ku Klux Klan conspirators, 598
Counsel for United States in Trial of Sherod Childers and others for conspiracy, 603
Counsel for United States in Trial of Robert Hayes Mitchell for conspiracy, 613
His speech to the jury, 624-663
Counsel for United States in Trial of John H. Mitchell and Thomas B. Whitesides for conspiracy, 737
His speech to the jury, 759-784
Counsel for United States in Trial of John S. Miller for conspiracy, 788
Counsel for United States in Trial of Edward T. Avery for conspiracy, 806
Counsel for United States in Trial of the Shearers for conspiracy, 839
Counsel in Trial of F. W. McMaster for contempt, 863
His address to the Court, 865-872
- CHILDERS, SHEROD
Trial of Sherod Childers, Evans Murphy, William Montgomery and Heneckiah Porter for conspiracy, 601-610
The narrative, 601
The Judges, 601
The indictment, 602, 603
The Counsel for the prosecution and defense, 603
Motion to quash indictment overruled by Court, 603-606
Question as to peremptory challenge of jurors, 606
The prisoners plead guilty, 608
Their sentences, 609, 610
- CLARK, W. A.
Was present at Ku Klux Trials, 805
His reminiscences of the trials, 805

CLARK, WILLIS H.

Counsel for prisoner in Trial of Julius Lehman for bribery, 570

CONSPIRACY

Trial of John H. Surratt for conspiracy to murder President Lincoln, 1-336

The Ku Klux Trials in South Carolina, 592-602

The Trial of Sherod Childers and others, 601-610

The Trial of Robert Hayes Mitchell, 611-735

The Trial of John W. Mitchell and Thomas B. Whitesides, 736-737

The Trial of John S. Millar, 788-804

The Trial of Edward T. Avery, 805-838

The Trial of the Shearer Brothers, 839-841

The Trial of Henry C. Warlick and others, 842-860

CONSTITUTIONAL LAW

Right of President to suspend writ of habeas corpus, 879-896

CONTEMPT

Trial of F. W. McMaster for, 861-878

CORBIN, DAVID T.

Counsel for United States in Trial of the Ku Klux Klan conspirators, 598

Counsel for United States in Trial of Sherod Childers and others for conspiracy, 603

Counsel for United States in Trial of Robert Hayes Mitchell for conspiracy, 612

His speech to the jury, 704-731

Counsel for United States in Trial of John H. Mitchell and Thomas B. Whitesides for conspiracy, 737

His opening speech to the jury, 737

Counsel for United States in Trial of John S. Millar for conspiracy, 788

His opening speech, 789

His closing address to the jury, 799-808

Counsel for United States in Trial of Edward T. Avery for conspiracy, 806

His opening speech, 807

His closing address to the jury, 833-838

Counsel for United States in Trial of the Shearers for conspiracy, 839

Counsel in Trial of F. W. McMaster for contempt, 862

His address to the Court, 872-875

D**DOUGLAS, WALTER B.**

Judge in Trial of Emil A. Meysemburg for bribery, 339

Rules against defense on question of evidence, 357

Sustains indictment as sufficient, 398

His instructions to the jury, 401-404

Overrules motion for new trial, 415

Sentences prisoner to penitentiary, 416

F**FICKLIN, MR.**

Counsel for F. W. McMaster in Trial for contempt, 862

- His address to the Court, 362-365
- FISHER, GEORGE P.
Judge in Trial of John H. Surratt as one of the conspirators to assassinate President Lincoln, 3
His charge to the jury, 299-319
- FOLK, JOSEPH W.
Counsel for State in Trial of Emil A. Meysenburg for bribery, 337
His opening speech to the jury, 342-346
His arguments to the Court on admission of evidence, 351, 353, 355, 356
His arguments to the Court on sufficiency of indictment, 384-388, 397
His closing address to the jury, 404-414
Counsel for State in Trial of Julius Lehman for bribery, 421
His opening address to the jury, 423
His closing address to the jury, 443-452
Counsel for State in Trial of Robert M. Snyder for bribery, 456
His opening speech for the prosecution, 458, 459
His closing address to the jury, 488-490
Counsel for State in Trial of Edward Butler for bribery, 500
His opening speech, 507
His closing address to the jury, 546-564
- Counsel for State in Trial of Julius Lehman for bribery, 570
His opening speech, 573-577
His closing address to the jury, 581
- GENTRY, NORTH T.
Counsel for prisoner in Trial of Edward Butler for bribery
Files demurrer to indictment, 501
Moves for a continuance, 506
- GERNESE, JOHN A.
Counsel for prisoner in Trial of Julius Lehman for perjury, 421
Counsel for prisoner in Trial of Julius Lehman for bribery, 570
- GILL, GEORGE M.
Counsel for petitioner in Merryman habeas corpus case, 880
- GORDON, WELLINGTON
Counsel for prisoner in Trial of Edward Butler for bribery, 500
- HABEAS CORPUS
Case of John Merryman, 879-896
Right of President of the United States to suspend writ of, 879-896
- HART, JAMES F.
Counsel for prisoners in Trial of Sherod Childers and others for conspiracy, 607

HARVEY, THOMAS B.

Counsel for prisoner in Trial
of Julius Lehman for per-
jury, 421

His speech to the jury, 442

HOCKADAY, JOHN A.

Judge in Trial of Edward
Butler for bribery, 496

Overrules demurrer to indict-
ment, 502-506

Grants prisoner a continuance,
506

His instructions to the jury,
521

Sentences prisoner to 3 years'
imprisonment, 555

I**INDICTMENTS**

Butler, Edward (bribery), 339-
341

Childers, Sherod (conspiracy),
602

Lehman, Julius (perjury), 420-
421

Lehman, Julius (bribery), 569-
577

Meysenburg, Emil A. (brib-
ery), 329-341

Snyder, Robert M. (bribery),
455, 456

J**JOHNSON, CHARLES P.**

Counsel for prisoner in Trial
of Edward Butler for brib-
ery, 500

His speech to the jury, 545

JOHNSON, REVERDY

Counsel for defense in Trial of
the Ku Klux Klan conspir-
ators, 698

Counsel for defense in Trial
of Sherod Childers and
others for conspiracy, 603

Counsel for defense in Trial of
Robert Hayes Mitchell for
conspiracy, 612

His speech to the jury, 685-
704

JOURDAN, MORTON

Counsel for prisoner in Trial
of Emil A. Meysenburg for
bribery, 340

Counsel for prisoner in Trial
of Robert M. Snyder for
bribery, 456

JUDGES

Bond, Hugh L., 598, 601, 612,
736, 788, 805, 839, 842, 862

Bryant, George S., 598, 601, 612,
736, 788, 805, 839, 842, 862

Douglas, Walter B., 339

Fisher, George P., 2

Hockaday, John A., 496

Ryan, O'Neill, 419, 454, 500, 569

Taney, Roger B., 880

Wyllie, Judge, 5

K**KEUM, CHESTER H.**

Counsel for prisoner in Trial
of Emil A. Meysenburg for
bribery, 340

His opening speech for the de-
fense, 348-351, 357-362

Argues question of admissibil-
ity of evidence, 352-356

Argues question of sufficiency
of indictment, 375-379, 393-
397

Counsel for prisoner in Trial
of Edward Butler for brib-
ery, 500

His speech to the jury, 528

Counsel for prisoner in Trial
of Julius Lehman for bribery,
570

KU KLUX KLAN

See also Childers, Shered;
Mitchell, Robert Hayes;
Mitchell, John W.; Millar,
John P.; Avery, W. T.;
Shearer, William; Wartlick,
Henry C.

Trials of the members of for
conspiracy, 593-600

The narrative, 593-597

The Judges and Counsel, 598

The Grand Jury, 598

Judge Bond's charge to the
Grand Jury, 598-600

L

LAWYERS

Bishop, Campbell O., 340, 421,
456, 500

Bradley, Joseph H., Jr., 4

Bradley, Joseph H., Sr., 4

Carrington, Edward C., 4

Chamberlain, Daniel H., 598,
603, 612, 737, 788, 806, 839,
865

Clark, Willis H., 570

Corbin, David T., 598, 603, 612,
787, 788, 806, 839, 843, 862,
865

Fickling, Wm., 362

Folk, Joseph W., 340, 421, 456,
500, 570

Gentry, North T., 500

Gernes, John A., 421, 570

Gill, George M., 830

Gordon, Wellington, 500

Hart, James F., 607

Harvey, Thomas B., 421

Johnson, Charles P., 500

Johnson, Reverdy, 598, 603, 612

Jourdan, Morton, 340, 456

Krum, Chester H., 340, 366, 570
Lehmann, Frederick W., 340,
456

Maroney, Andrew C., 340, 421,
456, 500

McMaster, F. W., 306, 361

Melton, C. D., 737

Merrick, Richard T., 4

Murry, Jerre H., 500

Pierrepont, Edwards, 4

Priest, Henry S., 456

Riddle, A. G., 4

Rowe, Thomas J., 421, 500, 570

Stanbery, Henry, 598, 603, 612

Turner, Squire, 500

Waller, Alexander H., 500

Warner, William, 456

Waties, Mr., 362

Williams, William M., 500

Williams, George H., 330

Wilson, Nathaniel, 4

Wilson, W. B., 607, 737, 788,
806

LEHMAN, JULIUS

Trial of, for perjury, 417-453

The narrative, 417-419

The Judge, 419

The indictment, 420

The Counsel for the State and
defense, 421

The motion to quash the in-
dictment, 422

The jury, 423

Mr. Folk's opening address to
the jury, 423

The witnesses for the State,
424-426

The defense demurs to the in-
dictment, 426

The Court overrules the de-
murrer, 426

The witnesses for the pri-
soner, 426-428

The witnesses in rebuttal, 429

- Judge Ryan's instructions to the jury, 439-442
 Mr. Bishop opens for the State, 442
 Mr. Harvey's speech for the defense, 442
 Mr. Folk's closing address to the jury for the State, 443-452
 The verdict of guilty, 452
 The sentence, 452
 Reversed by the Supreme Court, 452
 Trial of, for bribery, 567-592
 The narrative, 567-569
 The Judge, 569
 The indictment, 569-577
 The Counsel for the State and defense, 570
 Application for special jury granted, 571
 Change of venue refused, 572
 The jury, 572, 573
 Plea in abatement overruled, 573
 Mr. Folk's opening speech to the jury, 573-577
 The witnesses for the State, 577-587
 The instructions to the jury, 587-591
 Prisoner's Counsel makes no address to jury, 591
 Mr. Folk's closing address, 591
 The verdict of guilty, 592
 The sentence, 592
- LEHMANN, FREDERICK W.**
 Counsel for prisoner in Trial of Emil A. Meysenburg for bribery, 340
 Argues question of admission of evidence, 352-354, 355-357
 Argues sufficiency of indictment, 363-375, 383-393, 398
- His speech to the jury in behalf of prisoner, 404
 Counsel for prisoner in Trial of Robert M. Snyder for bribery, 456
 Argues demurrer to the evidence, 473
 His speech to the jury for the prisoner, 484, 485
- LINCOLN, ABRAHAM**
 Trial of John H. Surratt for conspiracy to murder, 1-386
 Suspends writ of habeas corpus; power denied by Chief Justice Taney, 879-896
- LINCOLN CONSPIRATORS. See SURRATT, JOHN H.**
- M**
- MARONEY, ANDREW C.**
 Counsel for State in Trial of Emil A. Meysenburg for bribery, 340
 Counsel for State in Trial of Julius Lehman for perjury, 421
 Counsel for State in Trial of Robert M. Snyder for bribery, 456
 His speech to the jury for the State, 485, 486
 Counsel for State in Trial of Edward Butler for bribery, 500
 His speech to the jury, 529-544
- McMASTER, F. W.**
 Counsel for prisoner in Trial of Edward T. Avery for conspiracy, 806
 His speech to the jury, 819-830
 Interrogation of Judge as to flight of prisoner, 820

INDEX

- Cited for contempt of court, 330
- Trial of, for contempt, 861-878
- The narrative, 861, 862
- The Judges, 862
- The Counsel, 862
- Mr. Ficklin's speech in defense, 862-865
- Mr. Chamberlain's speech in prosecution, 865-872
- Mr. Corbin's speech in prosecution, 872-875
- Mr. Waties' speech in defense, 876-878
- The Court renders no judgment, 878

- MELTON, C. D.
- Counsel for prisoners in Trial of John W. Mitchell and Thomas B. Whitesides for conspiracy, 737
- His speech to the jury, 752-759

- MERRICK, RICHARD T.
- Counsel for prisoner in Trial of John H. Surratt as one of the conspirators to assassinate President Lincoln, 4
- His speech to the jury, 38, 333-336.

- MERRYMAN, JOHN
- Case of in habeas corpus before Chief Justice Taney, 879-896
- The narrative, 879
- The Counsel, 880
- The petition, 881
- Return that President Lincoln has suspended writ, 882
- Chief Justice Taney holds that President has no such authority, 884
- General Cadwallader refuses to obey writ, 884
- The Chief Justice yields, 886
- His written opinion as to President's authority, 886-896

- MEYERBURG, EMIL A.
- Trial of, for bribery, 337-416
- The narrative, 337-338
- The Judge, 339
- The Counsel, 340
- The indictment, 339-341
- The jurors, 341
- Mr. Folk's opening for the State, 342-346
- Mr. Krum's opening for the defense, 346
- Mr. Folk's objections to evidence of value of prisoner's stock, 351-353, 355, 356
- Mr. Lehmann argues the question, 352, 354-355, 357
- Mr. Krum also argues it, 352-356
- The Court rules against the defense, 357
- Mr. Krum continues his opening address, 357-362
- The evidence for the State, 362-368
- Mr. Lehmann argues that the indictment is not sufficient, 368-375, 388-393, 398
- Mr. Krum argues on the same side, 375-379, 392-397
- Mr. Bishop for the State, 380-384
- Mr. Folk for the State, 384-388, 397
- The Court sustains the indictment, 398
- The witnesses for the defense, 399-401

- Judge Douglas' instructions to the jury, 401-404
- Mr. Bishop's speech to the jury for the State, 404
- Mr. Lehmann's speech to the jury for the prisoner, 404
- Mr. Folk's closing address for the State, 404-414
- The verdict and sentence, 414
- Reversed by the Supreme Court, 416
- MILLAR, JOHN S.**
- Trial of, for conspiracy, 788-804
- The narrative, 788
- The Judges, 788
- The Counsel, 788
- Mr. Corbin's opening address, 789
- The witnesses for the prosecution, 789-792
- The witnesses for the defense, 792, 793
- Mr. Wilson's address for the defense, 792-799
- Mr. Corbin's address for the prosecution, 799-803
- The verdict and sentence, 803, 804
- MITCHELL, JOHN W.**
- Trial of John W. Mitchell and Thomas B. Whitesides for conspiracy, 726-737
- The narrative, 736
- The Judges, 736
- The Counsel for the prosecution and defense, 737
- Mr. Corbin's opening speech, 737
- The witnesses for the prosecution, 738-744
- The witnesses for the defense, 744-747
- Mr. Wilson's address to the jury for the defense, 747-753
- Mr. Malton's address to the jury for the defense, 753-759
- Mr. Chamberlain's address to the jury for the prosecution, 759-764
- The verdict and sentence, 784-787
- MITCHELL, ROBERT HARRIS**
- Trial of, for conspiracy, 611-735.
- The narrative, 611, 612
- The Judges and Counsel, 613
- The jury, 613
- Mr. Corbin's opening speech, 613, 614
- The witnesses for the government, 615-627
- The witnesses for the defense, 627-634
- Mr. Chamberlain's speech to the jury for the prosecution, 634, 663
- Mr. Stanberry's speech to the jury for the prisoner, 663-686
- Mr. Johnson's speech to the jury for the prisoner, 685-704
- Mr. Corbin's speech to the jury for the prosecution, 704-731
- Judge Bond's charge to the jury, 731-734
- The verdict of guilty, 734
- The prisoner's plea, 734
- His sentence, 735
- MONTGOMERY, WILLIAM.** See CHILDERS, SHERRON.
- MURDER**
- Trial of John H. Surratt for conspiracy to murder President Lincoln, 1-326

INDEX

EVANS. See CHILDS.
Mason

J. JAMES H.

Counsel for State in Trial of
Edward Butler for bribery.
500

His speech to the jury, 544

P

PERJURY

Trial of Julius Lehman for,
413-453

PIERREPONT, EDWARDS

Counsel for prosecution in
Trial of John H. Surratt as
one of the conspirators to
assassinate President Lin-
coln, 4

His closing address to the
jury, 95-299

PORTER, HERBERT A. See CHIL-
DERS, SHEPARD

PRIEST, HENRY S.

Counsel for State in Trial of
Robert M. Snyder for brib-
ery, 456

Argues demurrer to the evi-
dence, 470-472

His speech to the jury for the
prisoner, 486-488

R

RIDDLE, ALBERT G.

Counsel for prosecution in
Trial of John H. Surratt as
one of the conspirators to
assassinate President Lin-
coln, 4

ROWE, THOMAS J.

Counsel for prisoner in Trial
of Julius Lehman for per-
jury, 421

Counsel for prisoner in Trial
of Edward Butler for brib-
ery, 500

Counsel for prisoner in Trial
of Julius Lehman for brib-
ery, 520

RYAN, O'NEILL

Judge in Trial of Julius Leh-
man for perjury, 419

His charge to the jury, 439-442

Judge in Trial of Robert M.
Snyder for bribery, 454

Overrules demurrer to indict-
ment, 458

His instructions to the jury,
472-481

Changes place of trial from
St. Louis to Columbia on ac-
count of prejudices of inhab-
itants against prisoner, Ed-
ward Butler, 500

S

SHEARER, HUGH H.

See SHEARER, SYLVANUS

SHEARER, JAMES B.

See SHEARER, SYLVANUS

SHEARER, WILLIAM

See SHEARER, SYLVANUS

SHEARER, SYLVANUS

Trial of, William, Hugh H.
and James B. Shearer for
conspiracy, 339-341

The narrative, 339

The Counsel, 339

The prisoners plead guilty, 339

The sentences, 340, 341

SNYDER, ROBERT M.

Trial of, for bribery, 453-491

The narrative, 453, 454

The Judge, 454

The indictment, 455, 456

The Counsel for the State and
defense, 456

The demurrer to the indict-
ment, 457

- The jurors, 458
 Mr. Folk's opening speech for the prosecution, 458, 459
 The evidence for the State, 459-470
 Mr. Priest demurs to the evidence, 470-472
 Mr. Lehmann argues for the defense, 472
 Mr. Harvey replies, 472
 Judge Ryan overrules the demurrer, 472
 The witnesses for the prisoner, 472-478
 Judge Ryan's instruction to the jury, 478-481
 Mr. Bishop's speech to the jury for the State, 481, 482
 Mr. Warner's speech to the jury for the prisoner, 482-484
 Mr. Lehmann's speech to the jury for the prisoner, 484, 485
 Mr. Maroney's speech to the jury for the State, 485, 486
 Mr. Priest's speech to the jury for the prisoner, 486-488
 Mr. Folk's closing address to the jury, 488-490
 The verdict and sentence, 490
- STANBURY, HENRY**
 Counsel for defense in Trial of the Ku Klux Klan conspirators, 598
 Counsel for defense in Trial of Sherod Childers and others for conspiracy, 608
 Counsel for defense in Trial of Robert Hayes Mitchell for conspiracy, 612
 His speech to the jury, 663-685
- SURRATT, JOHN H.**
 Trial of, as one of the conspirators to President Lincoln, 1-336
 The narrative, 1
 The Judge, 2
 The Counsel, 2
 The indictment, 2
 The jury, 5
 Mr. Willson's opening speech to the jury for the prosecution, 5-10
 The witnesses for the prosecution, 10
 Mr. Bradley's opening speech to the jury for the defense, 10-38
 The witnesses for the defense and in rebuttal, 38
 Mr. Carrington's argument to the jury for the prosecution, 38, 327-333
 Mr. Merrick's argument to the jury for the defense, 38, 333-336
 Mr. Bradley's argument to the jury for the defense, 39-95
 Mr. Pierrepont's argument to the jury for the prosecution, 95-299
 Judge Fisher's charge to the jury, 299-319
 The jury fails to agree on a verdict and is discharged, 319
- SURRATT, MARY H.**
 Her conviction and sentence defended, 327-333
- TANEY, ROGER B.**
 Judge in Merryman habeas corpus case, 379

President's power, to
writ, 835-836
fields to the military power,
836

URNER, SQUIRE

Counsel for State in Trial of
Edward Butler for bribery,
500

V

VENUE

Change of place of trial from
St. Louis to Columbia on ac-
count of prejudice of inhab-
itants against prisoner, Ed-
ward Butler, 500

W

WALLER, ALEXANDER H.

Counsel for prisoner in Trial
of Edward Butler for brib-
ery, 500

WARLICK, HENRY C.

Trial of, with forty-five others
of the Ku Klux Klan for
conspiracy, 842-860

The narrative, 842

The Judges, 842

The prisoners plead guilty,
842

Mr. Corbin's address to the
Court on the question of
punishment, 843

The sentences, 844-860

WARNER, WILLIAM

Counsel for prisoner in Trial
of Robert M. Snyder for
bribery, 456

His speech to the jury for the
prisoner, 452-484

WATERS, MR.

Counsel for F. W. McMaster in
Trial for contempt, 862

His speech to the Court, 876-
878

WHITESIDES, THOMAS B.

See MITCHELL, JOHN W.

WILLIAMS, GEORGE H.

Counsel for petitioner in Mer-
ryman habeas corpus case, 830

WILLIAMS, WILLIAM M.

Counsel for prisoner in Trial
of Edward Butler for brib-
ery, 500

His speech to the jury, 544

WILSON, NATHANIEL

Counsel for prosecution in
Trial of John H. Surratt as
one of the conspirators to
assassinate President Lin-
coln, 4

His opening address to the
jury, 5-10

WILSON, W. B.

Counsel for defense in Trial
of Sherod Childers and oth-
ers for conspiracy, 807

Counsel for defense in Trial
of John H. Mitchell and
Thom B. Whitesides for con-
spiracy, 737

His speech to the jury, 747-752

Counsel for defense in Trial
of John S. Millar for con-
spiracy, 788

His speech to the jury, 793-799

Counsel for defense in Trial
of Edward T. Avery for con-
spiracy, 806

His speech to the jury, 820-823

WITNESSES

Adams, Fred C., 477
 Arnold, William C., 477
 Ashew, Butler, 746
 Atkins, W. H., 632
 Atkinson, F. H., 70, 237
 Aubare, John H., 489
 Avery, Kinky, 515
 Bailey, L. B., 477
 Bankhard, C. H., 818
 Barry, David, 87, 169
 Bell, Edward A., 516
 Berry, Thomas L., 790, 808
 Bissell, Dr. Augustus, 288
 Blakey, Walter J., 509
 Blattau, Tillie, 514
 Blinn, C. H., 252, 288
 Blong, Andrew, 517
 Bolen, Thomas, 746
 Boucher, Rev. Chas., 110, 278,
 274, 276, 277
 Bowens, Shaffer, 742
 Bratton, William, 631
 Brown, Franklin H., 816
 Brumfield, Abram, 809
 Brumfield, Emeline, 809
 Bryant, E. C., 517
 Buck, H. A., 430
 Bunker, George W., 195
 Busche, Fred, 436
 Butler, Edward, 520
 Butler, Edward, Jr., 518
 Butler, James J., 517
 Caldwell, John, 624, 809
 Carland, Louis J., 93, 94, 262,
 264, 265
 Carpenter, Richard B., 623
 Carroll, Daniel, 792
 Carroll, Joseph, 69, 70, 284, 285
 Caruthers, Frank, 817
 Cass, John, 71, 288
 Chamberlain, Edward D., 436
 Chambers, Louisa, 515
 Chapin, George F., 255
 Chapman, Mrs. Bella M., 513

WITNESSES—Continued.

Chapman, Dr. Henry N.,
 Chester, Samuel K., 198
 Cleaver, William E., 26, 15,
 152, 227, 228
 Clowney, Jerry, 741
 Cochran, W. F., 477
 Coleman, Walter H., 236
 Cooper, R. E., 815
 Cooper, Robert H., 26, 245
 Coudrey, Harry M., 439
 Crosby, James, 743
 Crowell, H. C., 477
 Darwin, Robert R., 745
 Davis, Lawson M., 738, 791, 808
 Dawson, Mrs. Belle, 477
 Dawson, Charles, 196
 Dawton, Jack, 746
 Dierkes, Edward, 510
 Dieckmann, Louis C., 464
 Dingman, William T., 477
 Donthick, T. R., 473
 Donaldson, William R., 401
 Dorr, J. A., 424
 Drohan, M., 218
 Du Barry, J. N., 208, 209, 210,
 212
 Du Tilly, Joseph, 274
 Dutro, John M., 429
 Dye, Joseph M., 24, 242, 266
 Ennis, William G., 477
 Evans, L. F., 477
 Ferguson, Sam, 626, 790
 Ferrell, Governor, 814, 818
 Fitzgibbon, Patrick J., 509, 578
 Fitzpatrick, Honora, 85, 90,
 140, 173
 Fletcher, John, 148
 Foster, Charles W., 619, 740,
 791
 Francis, Charles W., 517
 Frye, C. J., 632
 Fudge, John B., 629
 Gadsdorf, Fred G., 436
 Gentry, Nell, 477

Witnesses—Continued.

Gifford, James J., 464
 Glines, Z. B., 216
 Godfrey, Lieutenant, 615
 Goebel, Edward E., 424, 469
 Graves, Charles A., 460, 577
 Green, John J., 477
 Greenwood, Moses, Jr., 463
 Grillo, Scipiano, 235
 Guilton, Major, 746
 Gunn, Kirkland L., 615, 739,
 747, 791, 808
 Gunthorpe, Osmond, 621, 738,
 807
 Hall, Edward F., 427
 Heath, Frederick B., 477
 Heaton, Frank M., 30, 241
 Helma, John, 582
 Hepburn, C. T., 216
 Hepburn, C. J., 216
 Hess, C. B., 223, 262, 264
 Higdon, John H., 577
 Hill, J. C., 477
 Hinson, A. F., 630
 Hobart, C. T., 251, 253, 255
 Hodges, William R., 367, 439,
 521
 Holahan, Mr., 62
 Holahan, Mrs., 85, 90
 Holmes, George, 477
 Holtcamp, Charles W., 431
 Hope, Albertus, 615
 Hornsby, Joseph, 516
 Howe, Mary, 745
 Howe, Sallie, 745
 Howell, Amos, 747
 Hospes, Richard, 366, 427
 Howser, Lewis, 633
 Hudspeth, Wm., 188, 189
 Jackson, Susan Ann, 175, 237
 James, J. C., 477
 Jameson, Dorsey A., 439
 Jenkins, J. Z., 145
 Jenkins, Miss Olivia, 85
 Johns, Shirley W., 468

Witnesses—Continued.

Judge, Joseph N., 424, 509, 578
 Judson, Fred N., 461
 Kaldenbach, Andrew, 184
 Kauffman, Max, 509, 518
 Kienecker, A., 267
 Kirkpatrick, Andrew, 625, 790
 Kobusch, George J., 464
 Konta, Alexander, 465
 Koonts, George B., 213
 Lambert, Mrs. F. R., 267, 363
 Latham, Henry, 741
 La Pierre, Wm., 111
 Leach, Charles, 744
 Leach, Eliza, 744
 Lee, John, 35, 234
 Lee, William H., 428
 Lehman, Julius, 437
 Lindsey, Bill, 628
 Littlejohn, Hiram, 624
 Lloyd, John M., 18, 19, 20, 79,
 152, 155, 158, 165, 331
 Long, James, 629
 Long, R. A., 472
 Lowry, John J., 630
 Luker, Anton H., 436
 Magill, Henry A., 477
 Majors, Samuel P., 477
 Marshall, F. E., 465
 Martin, George H., 460
 Mathews, John, 38
 Mathews, M. E., 133, 137
 Mayrant, R. P., 316
 Mehorney, Charles W., 477
 Mephram, Edgar A., 466
 Merrell, Dr. Albert, 514
 Merrell, Mrs. Thelma N., 516
 Merrell, Major Louis, 513
 Meysenburg, Emil A., 369
 Millar, John, 745
 Mielert, John F., 434
 Mitchell, Samuel, 746
 Mockler, George F., 362, 424,
 508
 Morehead, Thomas, 313

WIRRENS—Continued.

Morgan, R. C., 205, 206
 Moroso, John A., 633
 Morten, Isaac W., 401
 Murray, Martha, 333
 Murrell, Edward E., 536
 Murrell, John K., 573
 McCarthy, John K., 517
 McClermont, Mrs. E. W., 184
 McConnell, Minor, 631
 McClure, Daniel, 793
 McCurdy, J. W., 477
 McCullough, John A., 817
 McMillan, Dr. L. J. A., 33, 57,
 58, 60, 111, 112, 278
 McMillan, Robert, 477
 Nolker, William F., 368
 Norton, William, 165
 O'Connell, P. J., 633
 Offutt, Mrs., 19
 Olin, Judge, 226
 Pohlman, John H., 436
 Postle, Harriet, 810
 Postle, Isaac A., 810
 Potee, George P., 428
 Pumphrey, James W., 147
 Pyles, Justice, 168
 Quinn, Thomas F., 459
 Rainey, Amzi, 626
 Rainey, Elias, 747, 789
 Rainey, John, 790
 Rainey, Julia, 627
 Ramsell, Charles, 30, 250
 Ramsey, Elias, 625
 Reed, David C., 25, 229, 230
 Reiss, Paul, 435, 439
 Rhodes, Theodore B., 30, 224
 Richardson, William H., 477
 Richart, William H., 477
 Richey, Mrs., 477
 Riggins, Robert, 745
 Roberts, William, 70
 Robertson, George F., 555
 Robertson, John, 747
 Robertson, Mary, 743

WIRRENS—Continued.

Rogers, Joseph, 215
 Ross, Edward, 793
 Ruede, G. H., 477
 St. Marie, H. B., 36, 113, 253,
 258, 260
 Sangston, John, 259
 Schuler, A. L. O., 477
 Schuls, Herman, 436
 Schumacker, Otto, 535, 536
 Schweickhardt, Charles, 426
 Shapleigh, Richard W., 431
 Simril, Harriet, 742
 Smart, David A., 477
 Smith, Col. H. W., 200, 203
 Smoot, Edward L., 170
 Snider, T. A., 477
 Snyder, Mrs. R. M., 477
 Spreck, Edward W., 436
 Spreck, E. H., 438
 Stabler, Brooke, 143, 146, 147
 Starkloff, Dr. Max C., 516
 Steele, Gadsden, 623
 Stewart, Chas. B., 71, 287
 Stock, Philip, 362, 424
 Strayer, Geo. W., 214
 Sturgis, Sam, 810
 Sturtevant, W. L., 433
 Sweeney, John P., 433
 Sweetman, M. M., 477
 Tally, Dr., 816
 Tamblin, William M., 580
 Tataval, Peter, 337
 Tenbroek, G. H., 467
 Thomasson, David, 631
 Thomasson, John, 809
 Thompson, John C., 165
 Thompson, William H., 401
 Thornton, R. M., 477
 Tibbett, John T., 129
 Tims, Andy, 621, 632
 Toffey, John J., 149
 Tureman, Robert W., 477
 Turner, Charles H., 367, 427
 Uthoff, Frederick G., 460

WITNESSES—Continued.

Vanderpool, Benjamin W., 27,
231, 233
Vincil, Ella, 514
Walton, Farwell, 436
Watson, William J., 167
Welchmann, Louis J., 20, 32,
62, 77, 82, 87, 88, 94, 120, 135,
136, 137, 142, 143, 163, 173,
174, 178, 198
Weinerskirsh, William M., 204
Willmer, A. G., 438
Westfall, Ezra B., 216
Wetmore, C. F., 294
Wetmore, Claude H., 518
Whisonant, Hannah N., 745
White, Allen, 634
White, Churchill J., 474
White, E. C., 477
White, Mrs. E. C., 477

WITNESSES—Continued.

White, J. H., 633
Whitesides, W. C., 744
Wiggins, Charles, 383
Williams, Mrs. Rowy, 623
Wilson, Dick, 626
Wilson, Scott, 622
Wilson, Mrs. William, 747
Witherspoon, George, 633
Woerhelde, F. W., 436
Wood, Chas. H. M., 29, 219, 222
Woods, William Stone, 469
Yeager, R. L., 475
Zackritz, Fred G., 434
Zaduk, Adolph, 465

WYLLIE, JUDGE

Impanels the jury on the Trial
of John H. Surratt as one of
the conspirators to assassi-
nate President Lincoln, 5

